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DIVISION OF REVIEW

# POLICY ON WAGES ABOVE THE MINIMUM UNDER THE NIRA

By

William Lawson

(A Section of Part C: Control of Wages)

no. 3

WORK MATERIALS NO. 45
THE LABOR PROGRAM UNDER THE NIRA

Work Materials No. 45 falls into the following parts:

PART A: Introduction
PART B: Control of Hours and Reemployment
PART C: Control of Wages
PART D: Control of Other Conditions of Employment
PART E: Section 7 (a) of the Recovery Act

LABOR STUDIES SECTION

MARCH, 1936

OFFICE OF THE NATIONAL RECOVERY ADMINISTRATION

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MARCH, 1936

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# F O R E W O R D

This study of "Policy on Wages Above the Minimum Under the National Industrial Recovery Act" was prepared by Mr. William Lawson under the supervision of Mr. Solomon Barkin.

The study is one of a series concerned with different aspects of NRA experience with wages -- comprising policy, code provisions, administrative experience, compliance and effects.

In this study are discussed NRA policies with respect to the wages of workers receiving more than the minimum. This study outlines the acceptance by NRA of the need of some method of protecting such wages and the controversies over the type of code provision most adequate to attain the desired objective. The question of the propriety of incorporating definite wage basing points and wage schedules was outstanding in NRA wage policy history. Other methods for protecting the wage groups above the minimum are also discussed. The findings are of course those of the author and are not official utterances.

At the back of this report will be found a brief statement of the studies undertaken by the Division of Review.

L. C. Marshall
Director, Division of Review

March 23, 1936.

POLICY ON WAGES ABOVE THE MINIMUM

UNDER THE

NIRA

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# POLICY ON WAGES ABOVE THE MINIMUM

# UNDER THE

# NIRA

## SUMMARY OF FINDINGS

## I. INTRODUCTION

Provisions in codes of fair competition for "wages above the minimum", although frequently referred to in terms of "semi-skilled" and "skilled" occupational and operation classifications of workers, were construed to mean those provisions providing a control for the wages of all those workers exclusive of workers in the pre-code "lowest paid class". Provisions for "wages above the minimum" directly affected about 95 per cent of all workers under the NIRA and indirectly all workers affected by the NIRA.

The purposes of the regulations were to provide an adequate legal control through the implementation of codes of fair competition, agreements and licenses in order to increase the money earnings of the workers in the higher-wage-scale brackets. The basic law, the NIRA, is found adequate to furnish a basis for the administrative statutes in codes of fair competition, agreements and licenses.

## II. DEVELOPMENT OF POLICY

The National Industrial Recovery Act lacked any definite and complete legislative pattern for the formulation of policies. The NRA adopted the "trial and error" method for the promulgation of the new industrial laws. There was a pre-conceived plan for immediate objectives. The Administrator for Industrial Recovery determined that collective bargaining was not a prerequisite to the substance of the labor provisions in voluntary codes proposed by management. The deputy administrator was the pivotal executive, vested with wide discretionary powers.

Statements of the President and the Administrator issued shortly after the signing of the NIRA established the principle that the money earnings of the workers were to be increased. The first concrete evidence of policy dealing with "wages above the minimum" was contained in the Presidential Order, approving Code No. 1 for the Cotton Textile Industry. The President's Reemployment Agreement and the "model" codes prepared by the NRA for the guidance of industry and trade also contained provisions for "wages above the minimum". The policy memorandum issued by the Policy Board on October 25, 1933, was the first announcement of formal policy on this subject.

The suggested patterns presented in the early NRA documents were characterized by ambiguities, contradictions and other imperfections. These patterns did not provide for an increase in nor even the maintenance of the former money earnings of all the workers involved. Provisions were frequently of such a nature that it was impossible to interpret them. The policy memorandum of October 25, 1933, was the only official announcement of formal policy during this period. And although it was negative, incomplete and indefinite, it affected the development of all future codes in which "wage schedules" and "basing points" were proposed.

The relationship of the Executive Order of December 7, 1933, dealing with the collection of statistical data, to the proper administration of provisions for "wages above the minimum" in codes of fair competition is pointed out.

During the active period of the labor policy group, under Leon C. Marshall, Deputy Assistant Administrator for Policy involving labor problems, an effort was made to formulate a definite policy on this subject. No additions to or changes in formal policy, however, were officially announced during this period. The meagre standards for "wages above the minimum" suggested by the NRA Office Manual were equally as deficient as those offered by the sources from which these standards were abstracted.

The NRA Advisory Council considered the provisions for "wages above the minimum" in three specific industries presented to it for review. No new formal policy was announced during its activities to May 27, 1935, the date the Supreme Court declared the process of codification under Title I of the NIRA unconstitutional. The difficulties of the NRA, when presented with a situation involving a "wage schedule" or a "basing point" are evidenced by its handling of the electric and neon sign industry case. The inertia of the NRA is also indicated by its failure to act in response to the impracticability to obtain compliance shown by the replies to the questionnaire to the NRA field officers.

Administrative discretion dominated the choice and substance of the various types of deficient provisions and clauses incorporated in codes of fair competition. Implicit policy, nevertheless, appeared to indicate that some provision for "wages above the minimum" was desirable and essential.

The NRA Labor Advisory Board had fixed objectives to increase the money earnings of all workers and recognized its responsibilities to attain these objectives. It was cognizant of the weakness of the various provisions for "wages above the minimum" incorporated in codes of fair competition and made recommendations to the NIRB for possible future legislation.

The NRA Industrial Advisory Board opposed the inclusion of any provision for "wages above the minimum". All leading industrialists, however, did not subscribe to this policy. The NRA Consumers' Advisory Board limited its opposition to the incorporation of "wage schedules".

The NRA Legal Division appeared to hold conflicting views on this subject. It appeared to be unable to adhere to any fixed position, particularly as regards the inclusion of "wage schedules" and "basing points". The NRA Division of Research and Planning, although generally following the "established" policy of the Administration, frequently digressed to express individual ideas.

The NRA Review Division had no specific policy of its own. It acted as a checking unit to determine whether or not a particular document or proposal was or was not consistent with its interpretation of "established" policy.

The Code Planning Committee, organized informally on April 17, 1935, by the Code Administration Director, to suggest policy for the re-drafting of codes of fair competition proceeded to prepare another "model" code. It decided that it did not need the advice of the Labor Advisory Board in formulating suggested policy on labor problems. The NRA Labor Advisory Board

voiced its objections to its proposals for treating "wages above the minimum".

The complexity of this continuing problem and the inoperative meanings of the greater number of the provisions for "wages above the minimum" in approved codes and the resultant state of non-compliance is summarized in a communication from the NRA Administrative Office to the chairman of the Labor Advisory Board in March 1935. The chairman's reply invites attention to organized Labor's traditional opposition to the fixing of wages in private industry by the government. But aside from the chairman's abstract solution by the application of collective bargaining, no plan for the resolution of this issue is suggested.

III. AN APPRAISAL

The Presidential Order approving the code for the cotton textile industry definitely established the principle that the wages of all workers had to be protected. A control additional to that contained in the provisions for minimum wages was essential. This principle was re-affirmed by the President's Reemployment Agreement. The NRA, however, failed to make any official announcement that the provisions for "wages above the minimum" were mandatory.

The patterns suggested for "wages above the minimum" in the "model" codes issued for the guidance of industry and trade indicated a lack of proper planning.

The much-quoted, yet negative, indefinite and incomplete, Policy Board decision of October 25, 1933, prohibiting the inclusion of "wage schedules" in codes, may have been the result of the situation in which the Administration found itself as a consequence of the conflict on the code for the construction industry. Although it was the only piece of formally announced policy on this subject during the entire life of the NRA, it was not always observed although generally passively accepted.

Implicit policy, although sometimes contradictory to formal policy in other respects, appeared to require some type of regulation. As a consequence some provision for "wages above the minimum" was included in all but 13 codes.

NRA policies dealing with "wages above the minimum" were vague, vacillating and contradictory. The results as incorporated in codes of fair competition ranged from definite "wage schedules" with recognizable minimum rates and clauses for the maintenance or partial maintenance of former weekly earnings to platitudinous clauses without operative meaning.

# POLICY ON WAGES ABOVE THE MINIMUM

Under the

# NATIONAL INDUSTRIAL RECOVERY ACT

## I. INTRODUCTION

### A. THE MEANING OF THE TERM

Before proceeding to a discussion of the development of policy dealing with that part of the public law, promulgated pursuant to the National Industrial Recovery Act, relating to "Wages Above the Minimum", it must be made clear what is meant by such a term.

The term as commonly used within the National Recovery Administration and by industry was frequently explained to mean those wages above the minimum rate prescribed by a code of fair competition or the President's Reemployment Agreement, required to be paid to workers considered to be in the so-termed "skilled and semi-skilled", as distinguished from so-termed "common labor", operation or occupational classifications. (*) Such terms, however, were loosely used and never precisely defined.

In the development and administration of codes of fair competition, provisions for "wages above the minimum" were necessarily considered in relation to the "minimum wage" provisions. The NRA did not issue any general regulations setting forth in precise language any specific application of the rate or rates set by the "minimum wage" provisions. (**) By this is meant, that, although the "minimum wage" provisions of a code were designed to be all-inclusive and consequently to apply to all workers (other than those specifically excepted), they were not, in themselves, specific as to what division of workers the "at least" rate of the "minimum wage" provisions was to be paid.

The Presidential Order of July 9, 1933, approving Code No. 1 for the cotton textile industry recognized two classes of wages, i.e.,

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(*) The term "industry" as used in this study means the entire productive process (within the limits of the NIRA) or a specific sub-division, such as the Construction Industry. It contemplates the two major elements, "capital" and "labor". The term "management" as used means the interests representing the ownership of "capital.

(**) NRA Policy permitted more than one basic minimum wage. Frequently an all-inclusive basic minimum was supplemented by other basic minima for specific groups of workers, establishing geographical, population, sex and other differentials. (See NRA Office Manual, Par. No. II-1300ff.) NRA policy also permitted exceptions to these basic minima wages for learners, apprentices, handicapped workers and junior employees. (See NRA Office Manual Par. No. II-1300ff.)

"minimum wages" and "wages in the higher-paid classes". (*) It also inferentially designated what class of workers were to be paid more than the "at least" rate set by the "minimum wage" provision, i.e., those not in the pre-code "lowest paid class". (**) The wages of this class of workers, are referred to by the term "wages above the minimum".

Accordingly, provisions for "wages above the minimum" when strictly considered were construed to apply to the wages of all workers that were not in the pre-code "losest paid class". This class was comprised of those workers that by reason of skill, training, longevity of employment or other ability or subjection to hazard or for other reason or scarcity, commanded or were paid, prior to a code or the President's Reemployment Agreement, wages above the rate paid to the lowest wage scale class for a comparable period of time or amount of output.

B. THE SIGNIFICANCE OF "WAGES ABOVE THE MINIMUM".

Sub-section 3(a) of Title I of the National Industrial Recovery Act empowered the President of the United States to approve codes of fair competition for all industry and trade. There was only one limitation as to the scope or character of the industry or trade. This limitation was to the effect that "nothing in this Act, and no regulation thereunder, shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof; nor shall anything in this Act, nor regulation thereunder, prevent any one from marketing or trading the produce of his farm". Even the codification and administration of the labor provisions of agricultural industries and trades were within the jurisdiction of the NIRA.

Statistical data are not available to segregate (1) the number of workers, or (2) the annual earnings or "wage bill" involved or affected by provisions for "wages above the minimum" either under codes of fair competition, the President's Reemployment Agreement, or under the NIRA. Complete codification under Sub-section 3(a) of the NIRA has been estimated to include about 23.0 million workers. (***) Of these it has been estimated that 23.6 millions were embraced by approved codes of fair competition in

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(*) The term "class" as used in this sense denotes a group of workers. It is not limited to any occupation or occupational classification.

(**) Condition No. 5 of the Executive Order of July 9, 1933, approving the original code for the cotton textile industry reads as follows: "The existing amounts by which wages in the higher-paid classes, up to workers receiving $50.00 per week, exceed wages in the lowest paid class, shall be maintained."

(***) Estimate compiled by the President's Committee on Economic Security. Includes 17.6 employed plus 6.4 unemployed workers.

effect on May 27, 1935. (*)

The percentage of workers directly involved by provisions for "wages above the minimum" has been variously estimated between 80 and 95 percent of all workers covered by codes of fair competition. It would appear, however, that the proportion of workers more nearly approaches 95 percent. (**) This proportion represents the workers directly involved. But a worker was not fired to his pre-code status. Hence, if and when, a worker of the pre-code "lowest paid class" advanced to a higher wage bracket, his earnings were influenced by whatever regulations may have been established to control the wages of workers in the "higher-wage-brackets". To this extent, all workers under the NIRA were affected by the provisions for "wages above the minimum".

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(*) Cf. Classification of approved codes in industry groups, Work Materials No. 13, by the Division of Review, National Recovery Administration (1935). On May 27, 1935, there were 535 basic NRA codes and 19 joint AAA-NRA-L.P. Codes in effect. NRA Code No. 176 was consolidated with Code No. 201. NRA Code No. 191 was cancelled by Administrative Order No. 191-6, December 19, 1934. The joint AAA-NRA-L.P. codes embraced agricultural industries and insofar as NRA was concerned, consisted of labor provisions only. AAA-NRA-L.P. codes No. 2, 3, and 4 were consolidated into NRA codes Nos. 490, 196 and 182, respectively. The 1929 Census of Manufactures was used as a basis for the estimated figure of 22.6 millions. This figure represents the number of "employable" and therefore the estimated number or workers involved but not the number affected by the codes of fair competition or the NIRA.

(**) In the cotton textile industry, comprising approximately 380,000 workers, unpublished data of the Bureau of Labor Statistics, Department of Labor, indicates that in the pre-code period of July 1933, 8.99 per cent were in the wage scale bracket of "under 12.5 cents". In the silk and rayon industry, comprising about 130,000 workers, the Bureau of Labor Statistics, Department of Labor indicates that in the pre-code period of April 1933, 4.1 per cent were in the same wage scale bracket. (See Monthly Labor Review, June 1935). In the woolen and worsted goods industry, comprising about 151,000 workers, the Bureau of Labor Statistics, Department of Labor, indicates that in the pre-code period of January to March 1932, 11.9 per cent were in the lowest wage scale bracket of "under 25 cents". (See Monthly Labor Review, June 1935) In the bituminous coal mining industry, comprising about 469,000 workers, there was reported in 1933, 268 "trappers" (the lowest paid class of workers reported), i.e., less than 1 per cent of a total of 41,438 workers covered by a study of this industry. (See Monthly Labor Review, September 1933). In 1933, there was reported a total of 99 sewing-machine operators (the lowest paid class of workers reported), i.e., less than 1 per cent of a total of 114,243 direct manufacturing workers in the motor vehicle industry covered by a study of this Industry. (See Monthly Labor Review, June 1933. It is to be noted that the number of workers indicated in each wage scale bracket does not indicate the number in the lowest paid class.

C. THE PURPOSE OF THE ADMINISTRATIVE LAW

The purpose of the provisions for "wages above the minimum was to provide legal control thru the implementation of codes of fair competition, agreements and licenses, in order to effectuate the policies and purposes of the NIRA providing for an increase in the "purchasing power" of the workers in the higher-wage scale brackets.

As stated previously, the "at least" minimum rates of the "minimum wage" provisions applied to workers in the pre-code lowest class. (*) To increase the weekly earnings of this class of workers, the "minimum wage" provisions would have to be designed so that the rate (in terms of time, e.g., an hourly rate), when coupled with the allowable full-time code week, would provide full-time weekly earnings in excess of the earnings for the pre-code week. The accomplishment of this objective was important inasmuch as the rate prescribed by the "minimum wage" provisions to a great degree acted as a basing point for the "wages above the minimum" provisions. (**)

Minimum wage provisions, however, were not sufficient either to maintain or increase the money earnings of all workers. They did not provide a legal basis whereby an increase in money earnings was guaranteed to that large group of workers, estimated to comprise about 95 per cent of all workers. The rate established by minimum wage provisions applied to workers contributing to only a small share of the total labor income. Consequently, the larger share would remain unregulated unless other provisions were prescribed.

Furthermore, without some further effective provision, a concentration at or near the minimum would receive legal sanction. Management would be left free to leave unchanged or even reduce the wages of certain workers to compensate for any increase provided by the minimum wage provisions. Employers without a sense of social justice could continue their past "chiseling" practices in the competitive market at the expense of the worker.

In the declaration of policy as set forth by Section 1 of the NIRA, the objective to "increase the consumption of industrial and agricultural products by increasing purchasing power" preceded the charge "to reduce and relieve unemployment". Insofar as the national "wage bill" was concerned, these two objectives were correlative, for an increase in the number of workers employed would tend to increase the total payroll

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(*) A number of codes were approved with sub-minimum rates for certain groups such as learners, apprentices, handicapped workers and junior employees.

(**) The "wages above the minimum" provisions in 85 codes provided for the maintenance of differentials, i.e., the maintenance of the pre-code differences in rates of pay. Other provisions, e.g., some of those providing for the maintenance of weekly earnings, also provided for the maintenance of differentials.

But to prevent the "share-the-work" program from becoming a "share-the-poverty" movement by reason of the reduction in the hours of employment, it was essential that the entire wage structure below which the forces of the competitive market could be prevented from operating, should be supported, at least until such time as the State had extended its paternalism to the unionization of labor in all industry and trade to insure genuine collective action which the NIRA appeared to foster.

The State had declared that the latest recurrence of the social-economic disturbance was acute. An emergency existed. Successful accomplishment of an increase in the money earnings of the workers thru the process of collective bargaining depended on the unionization of labor in all industry and trade. Such an accomplishment, although deemed essential to the objectives of the NIRA, was a momentous task, requiring time and planning. It was also doubtful whether the State was prepared to proceed with paternalism on such a scale. Some other means of accomplishing equal results was essential to the immediate situation. Accordingly, provisions purporting to maintain or increase the money earnings of the great majority of the workers to which the rate set by the minimum wage provisions did not directly apply were conceived in the various forms and substances of the administrative statutes for "wages above the minimum".

D. THE LAW

The legislative policy set forth in Section 1 of Title I of the NIRA, "to increase the consumption of industrial and agricultural products by increasing purchasing power", clearly meant to increase the earnings of the workers in order to enable them to purchase more goods and services. The legal way of affording this protection to the workers was by the creation of administrative laws through the implementation of the codes, agreements or licences empowered under Title I of the NIRA. To insure that this protection would be complete as to all workers, it would be necessary to embrace the entire range of workers and their wages.

Sub-section 7(c) empowered the President to prescribe limited codes of fair competition, fixing maximum hours of labor, minimum rates of pay and other conditions of employment necessary to effectuate the policy of Title I, if, after investigation of the labor practices, policies, wages, hours of labor, and conditions of employment in any industry or trade where no mutual agreement had been approved, he found it advisable. In so doing the President was empowered to "differentiate according to experience and skill of the employees affected", provided no attempt was made "to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage". This sub-section clearly empowers the President not only to provide a minimum wage for all workers, but to establish a minimum wage for each class according to experience and skill. (*) The one specific restriction was against the introduction of any classification that might tend to set a maximum as well as a minimum.

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(*) Cf. Memorandum by Blackwell Smith, NRA Associate Counsel, to G. A. Lynch, NRA Administration Officer, May 10, 1934. See also "Compendium of Abstracts of Policy and Other Statements Issued by the policy group" (not dated) NRA. Mimeo No. 1637, Appendix "B" in NRA Studies Special Exhibits - Work Materials No. 45.

## II. DEVELOPMENT OF POLICY

### A. INTRODUCTION

In the introduction of the study of "Policies in the Control of Wages under the National Industrial Recovery Act", the "Principles of Policy" have been discussed and defined. (*) In this discussion it has been pointed out that NRA policy on the subject of wages took two forms: (1) formal or explicit policy represented by a stated set of rules, sometimes in written form, and (2) informal or implicit policy represented by common principles underlying the action taken in a series of decisions or the guiding principle followed in a single important situation. Of the two forms, implicit policy was the more common, due in a large measure to the dearth of formal NRA pronouncements on the more basic issues. It was also pointed out that the lack of formal policy for administrative guidance must not be interpreted to mean the absence of any policy or even more than one contradictory policy on the same issue under a similar set of circumstances. Nor must it be understood that formal or explicit policy, in all cases, agreed with or superceded implicit policy. To fully appreciate these contradictions, the frequent shifting and hedging, and the freedom permitting the use of administrative discretion, it is necessary to understand the NRA code-making scene.

### B. THE CODE BARGAINING SCENE

At the outset it would appear that the President elected to rely on the cooperation of management to submit voluntary codes and to revise their substance so as to be acceptable to such standards as the NRA improvised. The power of imposing a code under subsection 4(b) of the NIRA was never exerted, although orders of approval frequently modified the content of a code finally submitted. Furthermore, executive and administrative discretion rather than legislative dictum, to a large extent, accounted for the nature of the administrative organization and the policies pursued by the NRA. (**) The NIRA offered no complete and precise pattern. It did provide, however, for the two technical divisions, i.e., the Legal and the Research and Planning Divisions.

In the beginning the President elected to appoint one Administrator vested with temporary powers subject to an Industrial Recovery Board. (***) Shortly after, however, much broader powers were delegated to the Administrator and these continued to be augmented from time to time by other Executive Orders. (****) No Executive Order, however, appeared to

(*) This Chapter - "Policies on Wages above the Minimum" is part of the study of "Policies in the Control of Wages under the National Industrial Recovery Act."

(**) Cf. Subsection 2(a) of the Act.

(***) Cf. Executive Order No. 6173, June 16, 1933.

(****) Cf. Executive Order No. 6205-A, July 15, 1933.

set forth clearly and completely the "machinery" for the development and administration of codes.

Apparently it was decided that the NRA venture in the creation of industrial law required an elastic method for the crystalization of the experiement in industrial self-government and accordingly the method of trial and error was adopted. The code-making rules and regulations that were prescribed appear to reflect a preconceived plan for immediate objectives rather than for any long range planning. (*)

The initial step in the organization of the NRA was instituted by the President, i.e., the establishing of the three advisory boards to represent the interests of management, labor and consumer. (**) The Administrator in turn completed the system of organization. Codification centred about the deputy administrators appointed by the Administrator to whom powers and responsibilities were delegated. These executives were largely drawn from industry with some few with a previous labor background.(***) Although obligated to support the Constitution of the United States, they were not pledged to support the policies and purposes of the NIRA. Nor were they examined to determine whether they were familiar with the objectives of the NIRA. Except on important issues, the Deputy Administrators approved or disapproved the substance of the provisions of voluntary codes. They even composed the letters of transmittal to the President bearing the Administrator's recommendations.

At almost the beginning of code negotiations, the Administrator ruled that the labor provisions in codes proposed by management did not necessarily have to be the result of collective bargaining with the workers.(****) Such a ruling was confounding. But, if it had been otherwise it would undoubtedly have changed the entire organization for codification, at least insofar as the provisions dealing with labor issues were concerned. Representatives of organized labor had believed that all provisions affecting labor would be arrived at as a consequence of collective agreement. In this regard their opinions would seem to have been supported by the NIRA, itself, which not only appeared to be designed to promote collective bargaining but also to promote the organization of labor as well as management and even to permit labor and Consumer groups as well as employer groups to work out and submit codes of

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(*) Cf. NRA Bulletin No. 1, June 16, 1933, and NRA Release No. 11, June 25, 1933.

(**) Cf. NRA Bulletin No. 1, June 16, 1933.

(***) Cf. NRA Release No. 3635, March 6, 1934, quoting Pierre S. Dupont a member of the NRA Industrial Advisory Board, as follows: "The cooperation of industry has been notably illustrated within recent weeks by a response to a request of General Johnson that industry furnish the names of industrialists willing to undertake to act either as deputies of the Administrator or as government representatives of code authorities. The response to this appeal, which was made through the Industrial Advisory Board, was prompt and generous."

(****) Cf. Section 6 NRA Bulletin 2, June 19, 1933.

fair competition or other mutual agreements.

Such a ruling also appeared to anticipate the content of the rules and regulations which the President might prescribe as a measure to determine the true representative character of a proponent group. (*) The Administrator apparently concluded that such rules and regulations would not require the establishment of representation in the submission of codes for one of the two major elements of industry, i.e., the workers. Future policy of the NRA appeared to support the Administrator's conclusions. For, while the NRA instituted certain policies respecting the establishment of the representative character of a proponent group, it would appear that specific consideration was not given to the labor element.

The NRA also appears to have been conscious of the limitiations of the unionization of employees at the beginning of code negotiations and the accompanying difficulties of obtaining employee representation or collective action in the great number of unorganized fields. The President apparently had this situation in mind when he directed the appointment of a Labor Advisory Board by the Secretary of Labor to "be responsible that every affected labor group, whether orgainized or unorganized, be fully and adequately represented in an advisory capacity and any interested labor group will be entitled to be heard through representatives of its own choosing."(**)

An Industrial Advisory Board was also "appointed by the Secretary of Commerce to "be responsible that every affected industrial group is fully and adequately represented in an advisory capacity and any interested industrial group will be entitled to be heard through representatives of its own choosing." (***) At the same time a Consumers' Advisory Board was appointed to "be responsible that the interests of the consuming public will be represented and every reasonable opportunity will be given to any group or class who may be affected directly or indirectly to present their views". (****)

The Legal Division, to advise the NRA and its members regarding the legal phases of action taken pursuant to the NIRA and the Division of Research and Planning to gather and analyze facts concerning each industry and trade, completed the five major NRA Advisory groups.

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(*) Cf. Section 6 (b) of the NIRA.

(**) Cf. NRA Bulletin No. 1, June 16, 1933.

(***) Ibid.

(****) Ibid.

## C. EARLY DEVELOPMENT OF FORMER POLICY

### 1. Statements Of The President And The Administrator

It is not illogical that the first statement reflecting the attitude of the National Recovery Administration respecting the wages of workers -- all workers -- should be made by the President of the United States. In NRA Bulletin No. 1, issued June 16, 1933, the date the President signed the NIRA, the President stated: "The law I have just signed was passed to put people back to work -- to let them buy more of the products of farms and factories and start our business at a living rate again", and continuing: "It seems to me to be equally plain that no business which depends for existence on paying less than living wages to its workers has any right to continue in this country. By business I mean the whole of commerce as well as the whole of industry; by workers I mean all workers - the white collar class as well as the men in overalls; and by living wages I mean more than a bare subsistence level -- I mean the wages of decent living." "The idea is simply for employers to hire more men to do the existing work by reducing the work-hours of each man's week and at the same time paying a living wage for the shorter week." "The aim of the whole effort is to restore our rich domestic market by raising the vast consuming power." In these words the President emphasized one of the purposes of the NIRA - the raising of wages of all workers.(*)

This statement of the President was followed on June 19, 1933, by the issuance of NRA Bulletin No. 2 in which General Hugh S. Johnson, Administrator of the NRA, stated: "In order to carry out the President's suggestion as quoted in paragraph (1) and to effect an immediate reduction of unemployment and increase of mass purchasing power, trade associations or groups are invited to submit without delay a basic code covering only such agreements as are consistent with the policy of the act, respecting maximum hours of labor, minimum rates of wages, and such means as each industry may find necessary to protect its constructive and cooperating majority from the wasteful and unfair competition of minorities or recalcitrants" and that "minimum wage scales should be sufficient to furnish compensation for the hours of work as limited, sufficient in fact to provide a decent standard of living in the locality where the workers reside".(**) The Administrator by these statements emphasized the two important points for early codification:- an immediate reduction of unemployment and an increase of mass purchasing power. The pattern offered for the regulations was by providing "minimum wage scales" in codes of fair competition.

### 2. The First Code, July 9, 1933

The first concrete evidence of the policy to be pursued in dealing with "wages above the minimum" in codes of fair competition was contained in the Presidential Order of July 9, 1933, approving Code No. 1 for the

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(*) NRA Bulletin No. 1, June 16, 1933.

(**) Cf. NRA Bulletin No. 2, June 19, 1933.

cotton textile industry. This order provided that:

> "the existing amounts by which wages in the higher paid classes, up to workers receiving $30 per week, exceed wages in the lowest paid shall be maintained;"(*)

Apart from the qualification in this provision limiting its application to workers receiving less than $30.00 per week, it was a definite prescription that the wages of workers in the higher-bracket-wages group were to be increased by amounts equal to the increase that was prescribed by the minimum wage provisions. Furthermore, this provision embraced all workers in the higher paid classes (up to workers receiving $30.00 per week).(**)

The provision contained in this Executive Order demands emphasis: first, because the voluntary code submitted by industry failed to include any provision for "wages above the minimum" and the provision was included by Presidential Order; secondly, because it was the first expression of administrative policy on "wages above the minimum"; and thirdly, because it implied that the "at least" minimum wages prescribed by the "minimum wage" provisions were to be paid to the "lowest paid class" of workers. It was therefore apparent by this initial act of the President that provisions for "wages above the minimum" were to be provided in each code of fair competition and such provisions were to be designed to protect the wages of all workers not in the pre-code "lowest paid class".

### 3. Provisions And Interpretations Of The President's Re-Employment Agreement

The President's Re-employment Agreement of July 20, 1933, is the next important step in the development of policy dealing with this subject. The approval of only one code preceded the institution of this Agreement. This Agreement was a voluntary "blanket" affair designed for all industry and trade. Hence, its policy implications were correspondingly important.

This Agreement, pursuant to sub-section 4(a) of the Act, was conceived in order to accelerate the return of prosperity by prompt action to shorten work week and to raise wages for the shorter week pending the development and approval of codes.(***) Section 7 of this Agreement contained provisions affecting the compensation for employment in excess of the minimum as follows:

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(*) Cf. Condition No 5 of Executive Order, July 9, 1933, approving the code.

(**) Section 3 of Schedule "A" of proposed modifications approved July 16, 1933, and again modified and incorporated as Section XIII of the amended code, approved November 8, 1933, did not adequately provide for the wages of all workers. In the amended code, the "maintenance of differentials" provision, protected only those workers receiving in the pre-code period more than the minimum prescribed by the code.

(***) Cf. NRA Bulletin No. 3, July 20, 1933.

"Not to reduce the compensation for employment now in excess of the minimum wages hereby agree to (notwithstanding that the hours worked in such employment may be hereby reduced) and to increase the pay for such employment by an equitable adjustment of all pay schedules."

Immediately following the issuance of this Agreement, questions as to the intent of these provisions became so numerous that the Administration was forced to make certain interpretations which were later compiled in NRA Bulletin No. 4 issued early in September 1933. Two of these interpretations, Nos. 1 and 20, referred to the "equitable readjustment" provisions as follows:

"Interpretation No. 1 - Concerning Par. 7

"Paragraph 7 means, first, that compensation of employees above the minimum wage group (whether now fixed by the hours, day, week, or otherwise) shall not be reduced, either to compensate the employer for increases that he may be required to make in the minimum wage group in order to comply with the agreement, or to turn this reemployment agreement into a mere share-the-work movement without a resulting increase of total purchasing power. This first provision of paragraph 7 is a general statement of what shall be done, which is that rates of pay for employees above the minimum wage group shall be increased by "equitable readjustments". No hard and fast rule can be laid down for such readjustments, because the variations in rates of pay and hours of work would make the application of any formula unjust in thousands of cases. We, present, however, the following examples of the need for and methods of such readjustments:

Example 1.--Employees now working 40 hours per week in factories. When hours are reduced to 35, the present rate per hour if increased one-seventh would provide the same compensation for a normal week's work as before.

Example 2.--Employees now working 60 hours per week in factories. When hours are reduced to 35, a rate per hour if increased one-seventh might be insufficient to provide proper compensation. But, to increase the rate by five-sevenths, in order to provide the same compensation for 35 hours as previously earned in 60, might impost an inequitable burden on the employer. The 60-hour week might have been in effect because of a rush of business, although a 40-hour week might have been normal practice at the same hourly wage. Seasonal or temporary increases in hours now in effect, or recent increases in wages, are proper factors to be taken into consideration in making equitable readjustments.

The policy governing the readjustment of wages of all employees in what may be termed the higher wage groups requires, not a fixed rule, but "equitable readjustment" in view of long standing differentials in pay schedules, with due regard for the fact that payrolls are being heavily increased and that employees will receive benefits from shorter hours, from the reemployment of other workers, and from stabilized employment which may increase their yearly earnings.

The foregoing examples indicate the necessity of dealing with this problem of "equitable readjustment" of the higher rates of pay

on the basis of consideration of the varying circumstances and conditions of the thousands of enterprises and employments involved. Any attempt to define a national standard would be productive of widespread injustice. The National Recovery Administration will, through local agencies, observe carefully the manner in which employers comply with their agreement and to make "equitable readjustments", and will take from time to time and announce from Washington such action as may be necessary to correct clear cases of unfairness and to aid conscientious employers in carrying out in good faith the terms of the agreement.

When an employer signs an agreement and certifies his compliance and also joins in the submission of a Code of Fair Competition before September 1, 1933, his determination of what are "equitable readjustments" should be accepted at least prior to September 1, as a prima facie compliance with his agreement, pending action by NRA upon the Code submitted, or any other action by NRA taken to insure proper interpretations or applications of agreements. This will afford NRA an opportunity to survey the general results of the reemployment program and to iron out difficulties and misunderstandings over agreements that are of a substantial character."

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Interpretation No. 20 (Concerning Par.7)
Supplementing Interpretation No. 1

"Paragraph 7 prevents the reduction of compensation in excess of the minimum, whether it is paid by the hour, day, or week, or month.

Therefore, an employee previously paid by the day, week, or month will receive as much for the shorter day, week, or month.

An employee previously paid by the hour will receive as much per hour, but as shortening his hours will reduce his actual earnings per day or week his compensation per hour is to be increased by an equitable readjustment.

There is no fixed rule which can be applied to determine what is an equitable readjustment. In general, it will be equitable to figure what the employee would have earned at his previous rate per hour in a normal week in the industry, and then to increase the hourly rate so as to give him substantially the same compensation as he would have gotten for that normal week. But consideration must be given to other factors, including: Is the existing rate high or low compared with the average rate paid in the Industry? Will the resulting adjustment result in an unfair competitive advantage to other employers or other trades or industries? Will a long-standing wage differential be lost if there is no increase in the existing rate?"

The first sentence of paragraph No.1 of Interpretation No. 1 establishes that (1) compensation (hourly, daily, weekly or otherwise) of employees: "above the minimum wage group" shall not be reduced and (2) in any event "purchasing power" shall be increased. The method offered is by "equitable adjustments" of pay schedules. The examples, however, which are set forth to show the application of these provisions, im-

mediately indicate the complexity of application and the indefiniteness of the interpretations. The interpretation appears to indicate that policy dealing with this subject requires an "equitable adjustment" in view of the "long-standing differentials" but at the same time suggests that other factors such as the increase in payrolls, benefits to be derived from the shorter work week, reemployment of other workers and a stabilization of employment, should be considered. To what degree, however, these other intangible factors were to be considered, was not determined. Although compensation in the opening sentence appears to refer to hourly, daily, weekly or other compensation, the examples, suggesting a method of "equitable readjustment", appear to establish that an increase in weekly money earnings on the basis of the shorter week was intended. The determination of a "normal" pre-Agreement week is essential to the mathematical formula suggested. And apparently it was presumed that the number of hours in this "normal" pre-Agreement week was greater than the shorter week prescribed by the Agreement. For an employee working fewer hours per week before the Agreement than the maximum prescribed by the Agreement, these provisions merely guaranteed no reduction in hourly, daily or weekly earnings.

It would also appear that "equitable adjustments" were to be made individually. Consequently, employers who had made the greatest decreases prior to the Agreement could still retain their advantageous market position insofar as labor costs were concerned. And the inequalities in the wages paid to employees performing the same work in the same industry could be preserved.

It is also significant to note that Interpretation No. 1 referred to the "compensation of employees above the minimum wage group". The limitations of this "minimum wage group" were not stated, nor was such a term used in the original provision in the Agreement. Similar imperfections occurred in codes following the pattern of this Agreement.

Summed up, the President's Reemployment Agreement and the two official interpretations re-established that some control was essential to protect the wages of those workers who were paid compensation in excess of the pre-Agreement minimum in order to increase "purchasing power". The standards and methods of application of this control were indefinite. An "equitable adjustment" of pay schedules appeared to require compensation, substantially the same for the post-Agreement week as that for the pre-Agreement "normal" week. But there was no guarantee that such an "equitable readjustment" would provide anything more than a preservation of existing rates.

4. The Policy Memorandum of October 25, 1933

The next important step in the development of policy on this subject was the policy board's confidential Policy Memorandum released to the administrative staff on October 25, 1933.(*)

Paragraph No. 8 of this policy memorandum reads as follows:

"Union Agreements and Schedules of Wages

(*) Cf. NRA Office Order No. 35, September 16, 1933, for the creation of the Policy Board.

"No union agreements are to be written into codes nor are schedules of wages to be included in codes. The latter does not forbid two or three basing rates."(*)

Prior to the issuance of this policy board decision, a serious conflict had developed in connection with the negotiations for a number of the codes involving divisions of the construction industry. Organized labor identified with the construction industry had put up a stiff fight for the incorporation of "wage schedules" or "basing points" in the basic and supplemental codes for the construction industry for the various classes of so-termed "semi-skilled" and "skilled" workers. (**)

The NRA not only supported management's opposition to the incorporation of "wage schedules" for "semi-skilled" and "skilled" workers but was actively engaged in promoting a program conceived to revive the construction industry by extending an inducement to private financial interests in the form of deflating existing wages in this industry(***)

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(*) This decision did not define the terms "wage schedule" nor "basing rates". Wage rates may be divided into two general classes, i.e., a time or unit rate for a specific "occupational" or "operation" classification. Provisions for "wages above the minimum have been construed to provide a "wage schedule" if the provisions provide a wage rate or a series of wage rates (above the basic minimum) either of which is sufficient to provide a control of the minimum rates to be paid the occupational or operation classification or classifications of all or any significant and large area of the workers in the industry or trade. Provisions have been construed to provide a "basing point" if they provide one or more rates (above the basic minimum) which act as a "floor" for and/or influence the wages to be paid to a group of occupational or operation classifications. Infra.

(**) One basic code was proposed for the entire construction industry, including the designing, constructing, altering and repairing of buildings, bridges, highways, railroads , dams, sewers, etc. Provision was made in the basic code for supplemental codes for divisions such as electrical contracting, heating, piping and air conditioning, mason contracting, plumbing contracting, etc.

(***) Cf. " A Complete Resume of Negotiations Covering the Establishment of the Code of Fair Competition for the Building Construction Industries" prepared by the Building Trades Department of the American Federation of Labor in collaboration with Solomon Barkin, Assistant Executive Director of the Labor Advisory Board of the National Industrial Recovery Administration, in the January, 1935, issue of the Bridge Men's Magazine published by the International Association of Bridge, Structural and Ornamental Iron Workers.

In this regard it is important to bear in mind that on September 12, 1933, the Administrator for Title II of the NIRA had issued a bulletin incorporating minimum rates for "skilled" and "unskilled labor" in the three geographical areas of the United States for construction projects under the Public Works Administration, following the recommendations of the Labor Advisory Board appointed by the Secretary of Labor. (*) At that time it was estimated that 90 per cent of all construction activity was involved by the Public Works Administration programme.

This problem concerning the incorporation of "wage schedules" in codes was considered the most far reaching of all labor problems before the NRA. The NRA, management and labor were aware of its complications and proportions. A real test presented itself for the enactment of industrial statute to safeguard the money earnings of the 2,400,000 workers in the construction industry.

Ultimately, Donald R. Richberg, NRA General Counsel, ruled that the NIRA did not permit the inclusion of "wages schedules" in codes. (**) The result of the deliberations of the Administrator, the General Counsel and the Policy Board were finally disclosed in the aforementioned policy memorandum. (***) But this negative and incomplete decision did not settle the issue. The problem has been and continued to be the subject of controversy. In fact, in connection with the development of the codes dealing with the construction industry, it eventually helped to precipitate a rupture in the administrative organization.

From labor's point of view positive protection for all workers was essential. Management feared not only their bugaboo, "regimentation", but also the inroads of further unionization. The issuance of this policy was epochal. In spite of the fact that it was recognized that the problem concerning the incorporation in codes of minimum rates for all classes of workers had not been resolved, the greater part of the administrative organization appeared to passively accept the decision and proceeded to develop and administer codes accordingly.

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(*) Cf. Bulletin No. 2, September 12, 1933, Federal Emergency Administration of Public Works.

(**) This ruling was later confirmed in the General Counsel's Memorandum of February 17, 1934, to George L. Berry, Division Administrator, in charge of the codes involving construction. See Appendix "A", in NRA Studies Special Exhibits - Work Materials No. 45.

(***) This was the only decision recorded under the topical index of "Wages" in the "National Recovery Administration Index of Executive Orders, Administrative Orders, Office Orders, Office Memoranda and Other Pertinent Memoranda" for administrative guidance during the first year of code making. Whether this situation was indicative of the incompleteness of the index or not, the index served as an administrative guide in the development and administration of codes. See release (not dated), Mimeo No. 11579. Released about August 17, 1934. Included NRA Orders to July 27, 1934.

5. Model Codes, October 25 and November 6, 1933

On the same date that this much quoted policy board decision of October 25, 1933, was issued, a revised and confidential "Suggested Outline for Codes" (frequently termed a model code) was released by the NRA. The letter of transmittal from the NRA code standardization group to Blackwell Smith of the NRA Legal Division states that this "model code outline" contains the majority-opinion suggestions of a group of over twenty persons (this group included three from the Labor Advisory Board) who had met daily since October 12 on this matter. Two provisions in this "model code outline" deal with "wages above the minimum". These provisions are as follows:

Minimum Wage Rates by Occupation

> "Section 4. Within _____ days after the approval of this Code, the Code Authority shall determine the occupations in this Industry and present for approval to the Administrator after notice and hearing a schedule of minimum wage rates for occupations by localities."

Wages Above the Minimum

> "Section 6. No employee whose normal full-time weekly hours for the four weeks ending _____ (date) are reduced by less than _____ (30) percent shall have his or her full-time weekly earnings reduced. Any employee whose said full-time weekly hours are reduced by _____ (50) percent shall not have his or her said earnings reduced by more than _____ (25) percent. All other employees whose hours are reduced in excess of the said _____ (20) percent shall have their earnings adjusted proportionately. The principle of this section shall apply by class of worker to all other employees whose hours have been reduced, whether compensated on a time-rate, piece-work or other basis."

Accompanying these two provisions was a note as follows:

> "Note: The figures in brackets are not mandatory, but are set forth for purposes of illustration. Each industry may make its own proposals."

It has already been stated that this "model code outline" was confidential (presumably to the executives of NRA) but it should also be stated that the suggestions were intended "to assist trade and industry in the preparation of codes". This point is emphasized as the administrative staff to a great degree considered the various "model code outline" as the developing policy of the administration and an examination of the provisions in approved codes will witness that this was a fact. But more important, however, are the apparent contradictory situations. On the same date that the policy board declared that schedules of wages must not be written in codes, the code standardization group suggested to industry and trade to incorporate a provision whereby it became mandatory on the code authority to determine the occupations in the industry or trade and present to the Administrator for approval minimum wage rates for occupations by localities.

And simultaneously this same group suggested a "model" provision to incorporate in the same code providing for a "proportionate" adjustment of wages above the minimum. In this regard industry was permitted to propose its own terms.

The reason advanced against incorporating "wage schedules" in codes was that such provisions did not afford full opportunity to the workers involved to participate by bargaining collectively. Of course such reasoning was well founded. But the policy board decision of October 25, 1933, was not so qualified. It was a blanket prohibition. It must also be recalled that the provisions for minimum wages were established without resort to what had heretofore been acknowledged as genuine collective bargaining. (*) Furthermore, the reason for prohibiting "wage schedules" in codes would, from a practical point of view, hold equally true 30, 60, 90 or some other period of days after the effective date of a code or whenever the code authority was obliged to submit the minimum wage schedules by localities unless some effective means had been determined and made operative in the interim to accomplish collective bargaining. Certainly the Administration did not consider that the due process stipulation in the suggested provision was sufficient. The methods of accomplishing this suggested procedure or other qualifications on which the approval might depend, were apparently left for future consideration.

The provisions relating to the "proportionate" adjustment of wages above the minimum were also significant. The Administration was suggesting to Management for incorporation as public law, provisions which it later had to admit were impossible of interpretation and consequently not enforceable.

Aside from this, the Administration appeared to establish a new policy which tolerated something less than the maintenance of the amounts of pre-code differentials. The "normal full-time" week was introduced without qualification as to what constituted a "normal full-time week". Furthermore, it is possible in some codes that the number of hours, constituting the pre-code "full-time week" arrived at, would be fewer than the code week. In such an event a worker, receiving in the pre-code period more than the code minimum hourly rate, was left unprotected. This provision also permitted a reduction in weekly earnings.

On November 6, 1933, Hugh S. Johnson, Administrator for Industrial Recovery, released another revised "Suggested Outline for Codes". Again this revised "model code outline" was in the nature of suggestions "to assist trade and industry in the preparation of codes". This time the "Minimum Wage Rates by locality and occupation" provisions were modified as follows:

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(*) In NRA Bulletin No. 2, June 19, 1933, the Administrator stated: "Basic codes containing provisions respecting maximum hours of labor, minimum rates of pay, and other conditions of employment, which are in themselves satisfactory, will be subject to approval, although such conditions may not have been arrived at by collective bargaining". William Green, President of the American Federation of Labor did not agree with Leo Wolman, Chairman of the NRA Labor Advisory Board that the procedure pursued by the NRA applied in spirit and in fact the principles of collective bargaining.

"Section 3, After approval of this code, the Code Authority may present for approval to the Administrator, after notice and hearing, recommendations as to the upward adjustments in minimum wages for specified localities/occupations, in order to effectuate the purposes of the Act."

Industry and trade were offered a choice to two suggestions for the provisions dealing with "wages above the minimum". At the same time the deputy administrator and the advisory boards and technical divisions, charged with the responsibility of and participating in developing a code considered that they, too, were offered the same selection for their consideration. Hence, recommendations of the deputy or the advisory boards or technical divisions as to the propriety of either one of the proposed alternates for the particular code under consideration depended on the interests represented. Furthermore, the alternate, if any, ultimately accepted and proposed by industry depended on the relative bargaining power of the opposing groups and the discretion of the deputy administrator. The two suggested alternates were as follows:

"A. Section 4. No employee whose normal full-time weekly hours for the four weeks ending _____(date) are reduced by less than _____(percent) shall have his or her full-time weekly earnings reduced. No employee whose full-time weekly hours are reduced by more than said percent shall have his or her said earnings reduced by more than _____percent.

"B. There shall be an equitable adjustment of all wages above the minimum, and to that end, within (_____days or months) from the approval of this code, the Code Authority shall submit for approval of the Administrator a proposal for adjustment in wages above the minimum. Upon approval by the Administrator, after such hearing as he may prescribe, such proposal shall become binding as a part of this code, provided, however, that in no event shall hourly rates of pay be reduced."

At once the indefiniteness of the "minimum wage rates by occupations and localities" provisions is discerned even though the Administrator deemed it advisable to add that the procedure was to effectuate the purposes of the Act. The time of performance is not stated. The Provision, itself, is permissive, not obligatory. Wage schedules are replaced by recommendations. The entire provision appears impracticable. The contradiction with the policy board ruling of October 25, 1933, however, appears to be removed in this new "model code outline" along with any other meaning.

The suggested provisions for the " adjustment" of "wages above the minimum" appear to introduce further new thoughts. Alternate A retains the "normal full-time week" idea from the previous "model code outline" but permit industry to propose the percentage limitation for the hourly reduction basis as well as for the earnings reduction basis. This alternate likewise permits a reduction in weekly earnings. It also departs from the original idea of maintaining the amounts of differentials.

Alternate B introduces a new scheme for the "equitable adjustment" of all wages above the minimum. It also introduces a procedure whereby it becomes

mandatory for the code authority to submit within a stated time its proposal for the accomplishment of the "equitable adjustment" which may be reviewed, approved and made statute. Such a procedure raises the question when the adjustment is to be made effective. Normally, adjustments became effective on the effective date of the code. In this suggested language there appears the implication that the adjustment may become effective on administrative approval. But the administration did not guarantee any approval. This alternate B also raises the question whether the "adjustment" might be made in accordance with some plan for all occupational classifications in an entire industry. Except for the suggested establishment of a schedule for minimum wage rates by the provision for "minimum wage rates by occupation" offered in the "Suggested Outline for Codes" released October 25, 1933, it would appear that "adjustments" had been heretofore construed in terms of each individual enterprise or perhaps each unit of each enterprise. In the absence of any declaration to the contrary and in the light of the suggested section 3 - minimum wage rates by occupations and localities, industry could assume that a governmental approval of the entire range of wage schedules was possible and proceed accordingly. Such a procedure, however, was contradictory to the policy board decision of October 25, 1933, previously mentioned, which implied that neither "wage schedules" nor "basing points" would be countenanced for all occupational classifications. Moreover, unless the Administration aided the organization of workers in unorganized fields, it is probable that the conditions of such a provision as Alternate B could not be accomplished, at least if genuine collective bargaining was to be observed.

Questions relating to "wages above the minimum" continued to present themselves not only insofar as new codes were concerned, but also respecting the application of the provisions in existing codes. Furthermore, while this problem was the subject of considerable thought and discussion, the Administration does not appear to have made any further progress in the development of a definite policy of sufficient importance to be generally announced at the time a labor policy group was created on March 26, 1934. (*) Notwithstanding, it would appear pertinent to refer to certain statements by high NRA officials, indicating the unproductive groping of the NRA for an answer to the inquisitorial demands of those seriously interested in a solution to the problem:

> "I have the impression from various sources that industries tend to meet the minimum wage requirements at the expense of those immediately above the minimum wage group so that the payroll as a whole is not increased as much as it should be. In order to effectuate the policies of the Act there should be a general increase of all pay schedules and the gross payroll would have to be increased." (**)

> "The term "equitable adjustment" is a general term which has no fixed or inflexible meaning. It is a term which is subject to broad interpretation and one which was probably used advisedly in the first place because it was general and could be used to cover every conceivable situation that might arise. Obviously, therefore, what might be an equitable adjustment in one circumstance might be inequitable under other circumstances.

(*) Cf. NRA Office Order No. 74

(**) Cf. Memorandum by Blackwell Smith, NRA Associate Counsel, to S. H. Dubrul, November 10, 1933.

"In determining whether or not a particular readjustment is an equitable one there are certain factors which should always be considered. Chief among these is whether or not the adjustment is in keeping with the policy expressed in the Act and by the President, to wit, that of increasing purchasing power. Other factors to be considered are: (a) Is the existing rate high or low when compared with the average in the industry? (b) Will the adjustment result in unfair competitive advantages to other employers or other industries? (c) Will the adjustment result in the maintenance of long standing differentials?

"To be equitable, a readjustment must be fair to both employer and employee, but it would seem that in most cases major consideration should be given to the employee. Ordinarily, an employee's weekly wage should not be reduced because his hours of work are reduced. If he is paid on a hourly basis his hourly rate of pay should be adjusted upward so that the weekly wage will be maintained unless, of course, the reduction in hours is very great. It is very difficult to state hypothetically whether a given readjustment is an "equitable readjustment". In each case due consideration should be given to all surrounding circumstances and an amicable agreement reached if possible." (*)

6. Executive Order of December 7, 1933, Dealing with Labor statistics

It is also important at this point to call attention to the fact that the Administrator for Industrial Recovery authorized the Bureau of Labor Statistics, Department of Labor, to request, receive and tabulate reports from members of industries concerning payrolls, employees, and man-hours worked. (**) While such a procedure does not in the strictest sense indicate a direct development of policy on this subject, it nevertheless is indicative of the Administration's consciousness that the acquisition of statistical data was essential to the proper administration of codes and particularly in respect to the proper application of the code provisions for "wages above the minimum". (***)

B. SUBSEQUENT DEVELOPMENT OF FORMAL POLICY

1. The Policy Group Period

(*) Cf. Memorandum by Blackwell Smith, NRA Associate Counsel, to Ralph A. Byers, March 16, 1934.

(**) Cf. Executive Order No. 6479, December 7, 1933, and NRA Administrative Order X-10, March 16, 1934.

(***) Cf. "Issues Within the Problem of Wages in the Higher Brackets", in Section II-D-1(a)- Labor Policy Group; Comments of Committee on Labor Policy in Section II-D-1(c)- Tentative Formulation of Labor Policy and Recommendations of the NRA Labor Advisory Board in Section II-I-1- The Labor Advisory Board.

(a) Labor Policy Group

On March 26, 1934, the Administrator established three policy boards "to expedite and coordinate decisions of administrative policy (not only as to approved codes but as to codes in making and general policy questions as well)". (*) These boards were established to "make recommendations to the Administrator" and to "advise division administrators on final decisions on problems within their respective fields". One of these boards was a labor policy board, consisting of a chairman and one representative from the NRA Labor, Industrial, and Consumers' Advisory Boards and the NRA Legal and Research and Planning Divisions. All problems involving the labor provisions of codes and all questions of labor policy were to be considered by this Board. The personnel and the functions of the "old Policy Board", however, were not displaced. The name was merely changed to the "Staff". "Important matters of policy and of administration" were still to be considered by the "Staff". (**)

On April 9, 1934, the Administrator created two staff units, a Personal Staff and an Administrative Staff. (***) The Administrative Staff included an Assistant Administrator for Policy to perform the functions of the three newly created policy boards previously mentioned. The three policy boards were abolished. The NRA Office Order embodying this reorganization of the policy set-up prescribed that the Assistant Administrator for Policy would have supervision over policies governing;

> "Employment Problems: Such problems include those involving the labor provisions of codes and other questions regarding hours, wages, differentials, conditions of labor, etc." (****)

Three policy groups were provided for by this Order under Deputy Assistant Administrators for Policy. Leon C. Marshall was designated as the Deputy Assistant Administrator for the "Employment Problem" group, generally referred to as the labor policy group. (*****) This group was composed of permanent advisers from the three NRA Advisory Boards, the two NRA Technical Divisions and the NRA Compliance Division.

On May 17, 1934, the Administrative Officer set forth the guiding principles to be observed "in order to enable the policy staff to produce the results that are desired by all". (******) In this same memorandum it was stated that "policies when promulgated officially by the Assistant Administrator for Policy will be binding as to all future codes and modifications, except where special circumstances make departure necessary".

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(*) Cf. NRA Office Order No. 74, March 26, 1934.
(**) Ibid.
(***) Cf. NRA Office Orders Nos. 83 and 83A, dated April 9, 1934, and May 9, 1934, respectively.
(****) The Assistant Administrator for Policy was delegated supervision over "Trade Practice Problems" and "Code Authority and Classification Problems", also.
(*****) The two other deputy administrators for policy were designated by NRA Office Memorandum No. 18 , April 14, 1934. There is no record of an official order designating Leon C. Marshall.
(******) Cf. NRA Office Memorandum No. 207, May 17, 1934.

With the organization of the Labor Policy Board, it prepared to attack the subject of "wages above the minimum" on a broad front. At a meeting on May 18, 1934, the following topical memorandum was presented for consideration:

"ISSUES WITHIN THE PROBLEM OF WAGES
IN THE HIGHER BRACKETS

"If the NRA is to plan and control a program of handling wages in the upper brackets, policies must be framed upon a large number of issues, upon which heretofore varying stands have been taken. A partial list of the issues involved follows:

1. The extent of the increases in weekly and yearly wages.
   (a) The bearing of competing products.

2. The week or period to be taken as base.

3. Definition of full time working week before the code period.

4. Classification of occupations.
   (a) The prevention of reclassification of employees to avoid improper adjustment.

5. Wage differentials: plants, areas, etc.

6. Wage differentials between comparable workers in different industries.

7. The place of independent unions and company unions in the bargaining.
   (a) Existing labor agreements.

8. The legal status of the agreements.

9. The inclusion of all workers.
   (a) Prevention of exceptions.

10. The period of wage determination and the freezing of wages.

11. Part time workers.

12. Piece rates.

13. Salaried and commission workers.

14. Non-money compensation.

15. Collective settlement of disputes and a system of compliance.

16. A statistical reporting system."

And at the May 19th meeting the following outline was offered for review and discussion of the subject:

"AN APPROACH TO THE PROBLEM
OF
WAGES IN THE HIGHER BRACKETS

"What follows is designed merely to serve as a basis of definite, pointed discussion. It may facilitate this discussion to point out that the material deals only with an immediate course of action, and this only in certain classifications of codes. Furthermore, this material is drafted on the assumption that the immediate course of action should not contemplate inserting the codes classifications of occupations with attached wage rates.

THE FACTS: In the codes thus far approved, there has been great variation in the clauses dealing with wages in the higher brackets. Then too, there has been diversity of practice on the part of code authorities, even when administering identical clauses. The outcome of the whole matter has many unfortunate elements: (a) the Compliance Division cannot operate effectively when the provisions in a code are vague and uncertain -- as is frequently true of the clauses under consideration; (b) there is considerable unrest among workers, some of whom feel that the attitude of the Administration on the maintenance of purchasing power is not being carried out, that many of the clauses are irritatingly vague and noncommittal, and that many of the clauses hinder rather than promote collective bargaining; (c) in a considerable number of industries there is dissatisfaction with these clauses because the varying policies of the different firms have resulted in a difficult, if not unfair, competitive condition.

THE PROBLEM: The problem breaks into two parts: (a) what simple and immediate applicable course of action will give a satisfactory solution of the problem? (b) will this immediately applicable course of action sufficiently take care of long-run developments? Furthermore, in the practical application of policy, each of these parts may be considered in terms of (a) codes still to be approved and approved codes in which later action on other issues properly serves to reopen the problem, and (b) the other codes already approved.

What follows is concerned only with an immediately applicable course of action; and within that area, only with action in terms of codes still to be approved and approved codes in which the issue may naturally and properly be reopened.

A POSSIBLE COURSE OF ACTION: In order to simplify compliance problems, secure cooperative and united action of labor and management, and secure fair competitive conditions of the members of a given industry, the policy should be followed of inserting, in the codes now under consideration, clauses which will have the following characteristics:

1. There should be an avoidance of such vague and uncertain phrases as "so far as practicable", or "it shall be the policy to", or "a reasonable readjustment of wages above the minimum", or "an equitable readjustment of wages above the minimum", or "wage differentials shall be equitably maintained" and the like. So also such phrases as these excusing a member of the industry from paying a higher wage rate than is paid by a competitor in the same district should be avoided. Classifications of occupations

have not been sufficiently accurate and dependable, to prevent such phrases from leading to confusion and charges of non-compliance.

2. The minimum wage provided in such clauses for any given employee should be readily and definitely computable, so that any issues which may be raised in the matter of compliance or fair competition may be definite, and not vague and uncertain, issues.

3. If the minimum wages to be paid a given employee are to be derived from some comparison with wages in an earlier period, these earlier wages should be definitely ascertainable and the earlier period should be precisely stated.

4. Any terms or phrases dealing with wages, compensation, etc., should be carefully stated in terms of weekly rates, daily rates, hourly rates, or piece rates (as may be appropriate) so that there can be no misunderstanding concerning precisely what is meant.

5. It should always be made clear that minimum wage rates are being stated so that there can be no possibility of a later interpretation to the effect that (maximum) wage rates are fixed by the code.

6. Care must be taken to make exclusions, if any, of groups or classifications of workers precise and definite.

7. If the clauses are made sufficiently definite, there is no need of reports by members of the industry to the code authority and/or the Administration concerning the action taken by individual members on wages in the higher brackets. This statement, of course, has no application to the other reports on wages, hours, production, etc., that may be required in a given code.

8. Unless the matter is safeguarded at another place in the code, there should be provision for the maintenance of any more favorable standards of labor that may be provided for under existing agreements or state or federal laws.

9. Either among these clauses or at another place in the code, there should be a safeguard against evasion by such devices as re-classification of workers or their duties.

10. What other characteristics should be listed?

The following suggested section for a code is given as one which meets the requirements stated above and also embodies the theory of the maintenance of the purchasing power of the individual worker. (The clause which follows is the last one presented to the group for discussion).

> "Each employee (except one engaged in a supervisory managerial, executive or selling capacity, who is paid Fifty ($50.) Dollars per week or more), shall be paid a wage rate (whether paid on a time rate, piece rate, bonus, commission or other basis) which will yield at least the same wage for the shorter full-time week herein established that he could have earned for the same class of work for the longer full-time week as of June 16, 1933. Wage increases established under the President's Reemployment Agreement shall at least be maintained."

Certain alternative clauses were also presented for consideration, including the following:

"ALTERNATIVE CLAUSES OF MAINTENANCE OF WEEKLY COMPENSATION

"1. Increase for all employees.

Each employee (except one engaged in a supervisory, managerial, executive, or selling capacity who is paid $50.00 per week or more) shall be paid a wage rate (whether paid on time rate, piece rate, bonus, commission or other basis) which will yield for the shorter full-time week herein established a compensation ____% above that which he could have earned when continually employed on the same class of work for the longer full time week as of _____.

2. Increase for all employees except those earning 1929 wages.

Each establishment with the exception of those ----------

(1) Which are operation under wage agreements arrived at by collective bargaining; and

(2) Those which are paying not less than the weekly compensation which they were paying on July 15, 1929, shall make increases in its average hourly compensation for all classes of skilled labor, within 30 days after this Code becomes effective, on the following basis: Including increases made under Paragraph ____ of this Section each plant shall increase the hourly rates to a point where (including increases made since July 1, 1933) they are ____ percent higher than the hourly rates in effect on July 1, 1933, with this limitation, they need not increase rates above those paid on July 15, 1929. Within 30 days after this Code becomes effective any rate increases under Paragraphs ____ and ____ must be further augmented, if necessary, to bring the average hourly compensation paid in each establishment up to 90 percent of the hourly rates prevailing on July 1, 1933.

In applying the foregoing paragraphs, differentials in wage rates from basic rates for varying tasks within the same classes shall be maintained as in effect December 1, 1933, in the individual establishments.

3. Increase to common labor: maintenance of weekly compensation to others.

Each employee (except one engaged in supervisory, managerial, executive or selling capacity, who is paid Fifty ($50.) Dollars per week or more), shall be paid a wage rate (whether paid on a time rate, piece rate, bonus, commission or other basis) which will yield at least the same wage for the shorter full-time week herein established that he could have earned for the same class of work for the longer full-time week as of June 16, 1933. Wage increases established under the President's Reemployment Agreement shall at least be maintained.

4. Maintenance of weekly compensation to all.

Wage rates for piece and/or hourly workers shall be at least ____% in excess of the average rates prevailing on June 26, 1933. Weekly workers shall not receive less pay for _____ hours than they received for the prevailing work-week prior to June 26, 1933. Differentials in amount as they existed prior to June 26, 1933, between workers receiving minimum pay and workers in the higher paid classes, shall be maintained.

5. Maintenance to all in some cases: cut to all in others.

No employer shall make any reduction in the full-time weekly earnings of any employee whose normal full-time weekly hours are reduced by ____ percent, or less, below those existing for the four weeks ending _____. When the normal full-time weekly hours of an employee are reduced by more than said percent, the full-time weekly wage of such employee shall not be reduced by more than one half of the percentage of hour reduction above said percent. In no event shall hourly rates of pay be reduced, irrespective of whether compensation is actually paid on hourly, weekly or other basis.

6. Maintenance to common labor: cut to all others. (applicable perhaps to some capital goods industries.

(a) Each employee paid at the minimum rate herein established shall be paid a wage rate (whether paid on a time rate, piece rate, bonus, commission or other basis) which will yield at least the same wage for the shorter full-time week herein established that he could have earned for the same class of work for the longer full-time week as of June 16, 1933. Wage increases established under the President's Reemployment Agreement shall at least be maintained.

(b) Employees paid a rate above the minimum herein established shall not have their hourly rates of pay reduced, irrespective of whether compensation actually paid on hourly, weekly, or other basis."

The deliberations of the Labor Policy Group culminated in the following proposals sent to the various NRA Advisory Boards and Divisions as the Administration's proposed policy respecting "wages above the minimum":

"SUBJECT: WAGES IN THE HIGHER BRACKETS

THE FACTS: In the codes thus far approved, there has been great variation in the clauses dealing with wages in the higher brackets; and few of the codes have dealt with the problem in definite or enduring fashion. Then too, there has been diversity of practice on the part of Code Authorities, even when administering similar clauses. The resultant situation has many unfortunate elements:

1. The Compliance Division cannot operate effectively when the provisions in a code are vague and uncertain, as is frequently true of the clauses under consideration. The use of such phrases as "so far as practicable", or "it shall be the policy to", or "an equitable adjustment of wages above the minimum"; the use of loosely defined phrases referring to wages or compensation; the authorization of the setting of wages under

provisions which prevent these wages being readily and definitely computable--these and similar defects have greatly interfered with the effectiveness of the work of the Compliance Division.

2. There is considerable unrest among workers, many of whom feel that the attitude of the Administration on the maintenance of purchasing power is not being carried out; that many of the clauses are irritatingly vague and noncommittal; and that many of the clauses hinder rather than promote the collective bargaining which is of the very spirit of the National Industrial Recovery Act and is explicitly encouraged in Section 7(b).

3. In a considerable number of industries there is dissatisfaction with these clauses. In part, this dissatisfaction arises from an increased burden of reporting by members of the industry to the Code Authority and/or the Administration concerning the action taken by individual members on wages in the higher brackets. In part, it arises from a growing conviction on the part of many industrialists that collective bargaining provides the only workable method of arriving at an adjustment of those wages which will be mutually satisfactory to all parties concerned, and will make possible cooperatively reached future adjustments.

It is desirable to have more effective provisions with respect to wages in the higher brackets in future codes; and gradually to correct existing codes, as appropriate occasion may offer.

THE RECOMMENDATION: In order to bring about a more effective and equitable handling of wages in the higher brackets in codes yet to be approved, it is recommended:

1. That the provisions set forth in Paragraph 3 below be accepted as expressive of the Administration's policy.

2. That appropriate communications be transmitted to Division Heads, Deputy Administrators, and other interested parties, looking toward the insertion of those clauses in all future codes, except in those which have reached such a stage of development that this course of action is not feasible. (If the policies herein set forth are approved by the Administrator, a later memorandum will deal with possible ways of dealing with this problem in the approved codes.)

3. That, as the long-run and standard method of dealing with wages in the higher brackets, the following provisions be inserted in future codes:

> The Code Authority shall, immediately upon its organization, establish a Committee on the Description and Classification of Occupations in the Industry. The Committee shall consist of an equal representation of employers and employees, and its personnel shall be subject to the approval of the Administrator: provided that an appropriate

Industrial Relations Board may, with the approval of the Administrator, be used in this connection.

The Administrator will provide an appropriate agency which will assist the Code Authority in developing this description andclassification of occupations.

Within ninety (90) days after its establishment, the Committee shall report to the Code Authority and through it to the Administrator, in such manner and in such form as may be specified by the Administrator, a detailed description and classification of occupations in the Industry, together with the ranges of wages actually being paid in each classification by establishments in the various regions.

In the light of the information thus obtained, the Code Authority acting in conformity with the requirements of Section 7(a) of the National Industrial Recovery Act, shall forthwith promote collective bargaining between the employers and employees in the industry, in order to arrive at an equitable adjustment of wages and other conditions of employment. The parties concerned may, in their discretion, utilize the services of an appropriate Industrial Relations Board in connection with such negotiations.

As an interim measure, pending the adjustment worked out in conformity with the above provisions, each employee shall be paid a wage rate (whether paid on a time rate, piece rate, bonus, commission, or other basis) which will yield for a given occupation at least the same compensation for the shorter full-time week herein established that he could have earned for the same class of work for the longer full-time week (normal for that occupation in the establishment) as of DATE TO BE INSERTED: provided however, (1) that any person engaged in a supervisory, managerial, executive, or selling capacity who is regularly paid Fifty ($50.) Dollars per week or more shall be excepted therefrom; and (2) that if the normal full-time working week of any employee as of the foregoing date has been reduced by more than thirty percent by the provisions of this code, there may be a reduction in such weekly compensation of such employee not to exceed five percent; and (3) that wage increases established under the President's Reemployment Agreement shall at least be maintained.

The selection of the date is to be determined in the light of the facts pertaining to each industry.

4. That the Administrator at once authorize the establishment of the agency referred to in Paragraph 3 above so that effective counsel may be made available to Code Authorities in executing the policy set forth in that paragraph. Concerning this agency, it is to be said:

A. That it need not be large or an expensive agency, since its activities will be advisory rather than administrative.

B. That both within and outside governmental circles there exist a body of literature and competent personnel that can be readily drawn upon.

C. That in event the policy set forth in Paragraph 3 above is accepted by the Administrator, the Labor Policy Group will submit a detailed memorandum indicating the ways and means of establishing this service agency together with a suggested procedure to govern its operations."

These proposals were submitted to the NRA Labor Advisory Board by A. Howard Myers, Assistant to the Executive Director for the Board, and were rejected at its meeting on May 28, 1934, as recorded by its minutes in the following manner:

> "Dr. A. H. Myers, alternate for Mr. Sidney Hillman, representative of the Labor Advisory Board on the Labor Policy Board, read a clause regarding provisions for wages above the minimum which the Labor Policy Board proposed to include in all future codes and which possibly would be made retroactive to all approved codes,,,,,,,,,,,,
>
> "It was voted that a letter, opposing this clause be addressed to Dr. Leon Marshall, Deputy Assistant Administrator for Labor....."

The complexity of the problem and the existing state of confusion, both from the point of view of the administration of approved codes and the fixing of policy for future codes, are readily discernible from the summary contained under the topical heading "The Facts". It is also important to note that the proposed "maintenance of weekly earnings" provision suggested as an interim measure apparently did not contemplate an increase in the money earnings of the individual worker nor even the maintenance of money earnings in all cases. The recommendations, however, were not approved and consequently no further policy on this subject was established as a result of this effort.

It is important at this point to mention that the labor policy group were concurrently considering the problem of the formation and functioning of industrial relations boards. Administrative Order No. X-12, providing for the immediate creation of industrial relations committees, had already been issued on March 30, 1934.

Numerous codified industries had made demands on the NRA for some definite statement of its policy regarding the handling of labor complaints and labor disputes. The issuance of this Order precipitated further criticism of the NRA. At least it did not settle the other disturbing problem, i.e., the problem of handling industrial relations. Some industries even went so far as to state that they would cease further negotiationsunless they were assured that Administrative Order No. X-12 would not apply upon approval of the code. At the same time there was an undercurrent in the NRA, that the problem of handling industrial relations was so interlocked with other labor problems, particularly collective bargaining that it required further consideration. Executive Order No. 6763, was issued on June 29, 1934, creating the National Labor Relations Board, pursuant to Public Resolution No. 44 of the 73rd Congress. (*). This Executive Order was followed by Administrative Order No. X-69 issued July 27, 1934, abrogating Administrative Order No. X-12.

The reason for the interjection of these remarks regarding the problem of industrial relations is due to the fact that this issue was also involved in the recommendations of the labor policy group concerning "wages above the minimum", previously mentioned. It will be observed that the proposed "long-run and standard" method required a job analysis in each industry and trade. An approved appropriate industrial relations board (presumably created for the specific industry or trade) was permitted to be used in making this analysis. An appropriate (although no necessarily "approved") in ustrial relations board was also permitted to be utilized in connection with the promotion of collective bar aining. So, while the Labor Advisory Board did not express any reason for its rejection of the recommendations of the labor policy board, it was presumably guided in its action by its consider ion of the formation and activities of the industrial realtions board and the influence of these boards in respect to collective bargaining. This seems to be borne out by a memorandum from the Labor Advisory Board to Leon C. Marshall, Deputy Assistant Administrator for Policy, under date of May 29, 1934, as follows:

> "The Labor Advisory Board, after several weeks of thorough-going consideration of the subject of industrial relations boards and after lengthy conferences with General Hugh S. Johnson, Administrator, and Mr. W. Averill Harriman, Assistant to the Administrator, and in addition having discussed the subject at length with the Secretary of Labor, have reached an understanding, which is mutually satisfactory."
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> "In view of this, the Labor Advisory Board suggests the inadvisability of any other body, within the NRA

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(*) The Daily Revised Manual of Emergency Recovery Agencies and Facilities states that the main functions of the National Labor Relations Board were to insure the orderly and just settlement of Labor disputes and to promote the observance of Section 7(a) of the NIRA.

taking up for recommendation any feature connected with the setting up or the functioning of industrial relations boards, or similar committees."

The direction of thought of the labor policy group at this particular period is further set forth in a memorandum by Leon C. Marshall to Blackwell Smith, Assistant Administrator for Policy, dated May 29, 1934, which reads as follows:

"Wages in the Higher Brackets

1. The Labor Policy Group continues work on this problem. I hope we are nearing a completion of our labors.

2. Mr. Bardsley's memorandum to you of May 25 is based on a misapprehension of the work in progress. In large part, the work of the Labor Policy group has had in mind the injustice of forcing an employer who has been generous to his employees during the depression to continue to pay more or less permanently a higher wage than his competitors pay. We are attempting to remedy this situation by a provision which promotes the description and classification of occupations, and collective bargaining based thereon.

There are, of course, several conceivable courses of action which might be taken in this area:

A. The provisions concerning wages in the higher brackets might be left so vague that no real control is exercised over the situation. This has been demonstrated to lead to inequality in competitive conditions.

B. These provisions might be made quite stringent and definite, being based on weekly wages as of some date. This also is inequitable because it penalizes the generaous employer.

C. The task might be assumed of conducting hearings and fixing (minimum) wages in the higher brackets in the codes. This is of doubtful wisdom, and would call for an almost incredible expenditure of energy in connection with the hundreds of small codes, to say nothing of the difficulties with the larger codes.

D. Steps might be taken to promote collective bargaining on wages in the higher brackets, expecting thus to arrive at a workable solution of the difficulties, and one which will be moderately satisfactory to all parties concerned. This is the policy toward which the Labor group is heading; and clauses regulating weekly wages are thought of as necessary interim clauses, to be used while the process of collective bargaining continues."

This memorandum appears to emphasize a new view point. It emphasizes the "injustice of forcing an employer who has been generous to his employees during the depression to continue to pay more or less permanently a higher wage than his competitors pay". The real issue, however, was the injustice to the employee, who, due to the reductions in earnings he had been forced to accept during the depression, finds

himself exchanging his labor in the production of the same or similar product or service at a much less price than other workers who were not victimized to such an extent. Apparently, Mr. Marshall was contemplating a greater equilibrium of minimum wage rates by occupational classifications within each industry and trade in order to obtain an optimum respecting the most disturbing product-cost variable. The accomplishment of such an optimum required a critical job analysis of each industry and trade.

An intelligent analysis of each industry and trade was antecedent to such a job analysis. At the time effective enforcement of codes seemed almost hopeless due to the multiplicity of code "overlaps" and "gaps" in the scope of industries and trades. (*) Consequently, it would be difficult to establish proper specifications for each occupation or operation unless the limits of the industry were reasonably determined. Furthermore, a proper and orderly arrangement and composition of industries and trades was essential to any scheme to promote collective bargaining.

Space will not permit a review of all the discussions of the labor policy group on this subject. The problem, nevertheless, continued to harass the Administration. In at least one instance the Assistant Administrator for Policy, Blackwell Smith, appeared to depart from the October 25, 1933, official policy decision of the Policy Board and permitted the incorporation of three "basing points" according to geographical areas for "skilled workers" and three for "unskilled workers" in the code for the plumbing contracting division of the construction industry, approved May 15, 1934. This decision was as follows:

> "No tenable objection can lie to the establishment of a minimum wage for unskilled labor and a higher wage minimum for skilled labor. The Act does not prohibit the establishment of such rates, but on the contrary, it might be argued that Section 7(c) is express authority therefor. In addition, the establishment of such rates, according to the Division Administrator, is in accordance with a promise of the President." (**)

(*) Cf. Section II - H, The Code Planning Committee for Statement by L. J. Martin, Acting Administrator (former Chief of the Compliance Division). Cf. "Continuing Issues", p. 396, The National Recovery Administration; An Analysis and Appraisal," The Brookings Institution (1935)

(**) Cf. Memorandum to Col. G. A. Lynch, Administrative Officer, May 10, 1934. See also Appendix "B", Extracts From A Compendium Of Abstracts Of Policy And Other Statements Issued By The Policy Group (not dated), NRA Mimeo No. 1637, and Appendix "C", p.1. - Statement of Policy Used By Division Of Review, in NRA Studies Special Exhibits - Work Materials No. 45.

Other recommendations leaned toward the official decision of the Policy Board. Among the opinions rendered by Leon C. Marshall, Deputy Administrator for Policy, in June 1934, the following are representative:

> "Article IV of the Code (Cap and Cloth Hat Industry), in Sections 2 and 3 provides for certain types of skilled labor a minimum of fifty-five cents per hour in the Eastern area and thirty-seven and one-half cents per hour in the Western area."
>
> "The Review Officer refers to the policy memorandum of October 25, which says: "No union agreements are to be written into codes nor are schedules of wages to be included in codes. The latter does not forbid two or three basing rates." The Review Officer points out, furthermore, that our general policy is not to include skilled wage rates except they be the result of collective bargaining with proper notice and hearing in advance of such."
>
> "Concerning the problem thus raised, it would seem:
>
> 1. That the basing rates of fifty-five cents and thirty-seven and one-half cents are not, in and of themselves, contrary to expressed policy.
>
> 2. That the question of fact involved whether these basing rates represent true collective bargaining in the industry and whether they have been properly arrived at in the processes of code formation is one which this office cannot answer. The....."
>
> 3. That, in general, the insertion of definite wage rates above the minimum in a code is a matter that should be very carefully safeguarded, with much responsibility ultimately resting on the Administrator concerned." (*)

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(*) Memorandum to Blackwell Smith, Assistant Administrator for Policy, June 2, 1934, See also Appendix "B", p.2, in NRA Studies Special Exhibits - Work Materials No. 45.

"THE FACTS: The Industry (Marking Devices Industry) suggests a quite detailed method of handling wages in the higher brackets on the basis of a classification of experience, knowledge, and skill of the employee in any work classification. The plan as arranged would have certain repercussions upon learners and apprentices. It appears that the intention is to confer upon this plan the force and effect of a code.

INFORMAL FINDINGS: This issue was placed before the Labor Policy Group in an informal way and can accordingly be met by the following informal findings. It is believed:

1. That the presumption is strongly against giving any such detailed formulation of wage procedure the force and validity of a code.

2. That, in any event, such a detailed formulation should be given the force of a code only after a true collective bargain within the industry and/or a very full and free public hearing on the matter.

3. That the subject matter of this particular formulation is definitely more appropriate for true collective bargaining within the industry than it is for formal insertion in a code." (*)

(a) The Basic or General Code

During the period in which the labor policy group was attempting to crystalize some definite policy relative to "wages above the minimum", the Administration was giving considerable thought to the codification of the remaining groups of industry and trade, not covered by approved codes. Orders were issued embodying a plan for the completion of code making and a committee was appointed to supervise the execution of the plan.(**) Deputy Assistant Administrators for Policy, Leon C. Marshall and George S. Brady, were named as two of the three members

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(*) Memorandum to Blackwell Smith, Assistant Administrator for Policy, June 2, 1934. See also Appendix "B", p. 1, in NRA Studies Special Exhibits - Work Materials No. 45.

(**) Cf. NRA Administrative Orders Nos. X-61, X-62 and X-63, July 10, 1934 and NRA Office Order No. 100, July 10, 1934.

of this committee, under the Chairmanship of Robert K. Straus. Part of this plan included what was termed the "Basic Code". (*) Section 4 of Article II of this "Basic" or general code treated "wages above the minimum as follows:

> "All wages shall be adjusted so as to maintain a differential at least as great in amount as that existing on June 16, 1933, between wages for such employment and the then minima. In no case shall there be any reduction in hourly rates; nor in weekly earnings for any reduction in hours of less than thirty per cent."

It will be observed that two of the deputy assistant administraters for policy who had advocated the proposals previously mentioned were designated on this "mop-up" committee. (**)

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(*) Cf. NRA Office Memorandum No. 251, July 10, 1934 and attachment Exhibit "A".

(**) For the plan see Section II-D-1 (O) labor policy group. Deputy Assistant Administrator for Policy, George S. Brady, although appointed to handle policies governing code authority and classifications by Office Memorandum No. 184, April 14, 1934, advocated a job analysis study of industry a d trade and had been consulted by and assisted Leon C. Marshall in formulating the proposals. George S. Brady was relieved as Deputy Assistant Administrator for Policy and appointed Assistant Administrative Officer, July 3, 1934 - See NRA Office Memorandum No. 246, July 3, 1934.

The scheme for "wages above the minimum" in this general code, however, was quite different from the plan proposed by the labor policy group. The first requirement of the provisions in this general code is a positive prescription to maintain the amounts of differences existing on June 16, 1933, and in this regard is similar to the prescription contained in the Executive Order for Code No. 1 for the cotton textile industry. It re-affirmed that the provisions for "wages above the minimum" involved the wages of all workers not in the pre-code "lowest paid class". The importance of this latter stipulation has already been demonstrated. The second requirement, i.e., the maintenance of weekly earnings, produced a limited added protection. Apparently, it was the intent that these two requirements, taken collectively, would provide not only for the maintenance, but also for an increase in the money earnings of the workers affected. The provision, however, was not definite as to what weekly earnings were to be maintained. Furthermore, it was possible that in certain cases there were fewer hours in the pre-code week than in the post-code week. Reference to a "normal" or "full-time" pre-code week was avoided. The suggested provisions of the labor policy group's previous recommendations looking towards a greater equilibrium in minimum wages by occupations or operations were not incorporated in this general code. This type of provision, however, overcame the necessity of attempting to interpret the various "equitable adjustment" provisions patterned after the President's Reemployment Agreement and the "model" codes, and which brought forth comments from the NRA Legal Division such as :

" I know of no general interpretation of the above term ("equitable adjustment") which has been issued by NRA, and I am unable to give you such an interpretation."

" The term is too vague and indefinite to be interpreted insofar as it applies to all codes, and I do not think that it can be arbitrarily interpreted insofar as it applies to a single code. What might be equitable for one member of the industry might be very inequitable to another member of the industry."

In my opinion, no interpretation can be made without a detailed study of the conditions under which a particular employer is operating and I doubt that an interpretation, even though made under such circumstances, would be binding on an employer unless he agreed thereto. Personally, I feel that the terms are so vague, indefinite, and ambiguous that no prosecution based upon failure to readjust would be successful."(*)

(c) Tentative Formulation of Labor Policy

The next important measure in the development of labor policy, including policy respecting "wages above the minimum", was initiated by the Assistant Administrator for Policy, Blackwell Smith's request to Leon C. Marshall to prepare a draft on "Labor Policy" of the NRA for

(*) Cf. Memorandum to E.H. Jeffrey, NRA Review Division, by L.J.Bernard, Assistant Counsel, August 14, 1934.

presentation to Walton H. Hamilton, Chairman of the NRA Advisory Council.(*) Accordingly, this draft was prepared. The second part, submitted on August 24, 1934, contained recommendations relating to "wages above the minimum" as follows:

"IV. WAGES IN THE HIGHER BRACKETS

"Wages in the higher brackets have prevailingly been handled by methods sketched under A below; occasionally method B has been used; method C unfortunately has had little or no use.

A. Provisions Which Do not Specify Rates but Call for "Adustment"

The overwhelming majority of the codes call for some type of "adjustment" of wages in the higher brackets. The more commonly used methods are as follows:

1. In some instances weekly earnings have been maintained. This is permitted by policy; but the provisions must be carefully drafted so that it will be clear, definite, and capable of smooth handling by compliance agencies.

2. In other instances, some specified proportion of weekly wages has been maintained, the formula varying from case to case. This partial maintenance of weekly earnings is also permitted by policy; and again the provision must be carefully drawn.

3. In still other instances, a provision has been used that an "equitable adjustment" shall be made in wages above the minimum. A provision which does only this may now be regarded as contrary to policy, since it is without operative meaning; and this fact always hampers compliance agencies, and frequently militates against "united action of labor and management."

4. In still other instances, there is a provision that an adjustment shall be made (or a plan of adjustment formulated) and reported for approval by the Administrator. This method is permissible, but only under unusual circumstances should adjustments thus made be given "the force and effect of the code itself." In any event, the interests and participation of labor must be safeguarded lest this method stimulate friction rather than "united action of labor and management".

Note 1: Some matters which patently call for care in connection with the foregoing methods are these:

(a) Such phrases as "prevailing in the community" (or even in the plant), "class of work", "normal full-time week", "long-established differentials", "prevailing differentials", and the like, have no clear operative meaning

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(*) The NRA Advisory Council was established on May 21, 1934, by NRA Office Order No. 89.

and accordingly possess dangerous points of friction between worker and management. Furthermore, they constitute serious problems of interpretation for compliance agencies. The general rule is clear that vague, confusing clauses should be avoided.

(b) A provision frequently appears, often in connection with some other provision, that a "differential" is to be maintained. This is subject to such difficulty that the "maintaining" may be on several possible bases, such as either proportional or arithmetical additions to existing wages. If such a provision is used, it should be phrased with great care.

(c) Attention must be given to the problem whether certain employees are to be excluded from the adjustment.

Note 2: A sample provision which by no means overcomes all the difficulties cited (the difficulties of the "adjustment" method seem almost insuperable), is given below. It is of course, only one example.

Each employee shall be paid a wage rate (whether paid on a time rate, piece rate, bonus, commission or other basis) which will yield for a given occupation at least the same compensation for the shorter full-time week herein established that he could have earned for the same class of work for the longer full-time week (normal for that occupation in the establishment) as of DATE TO BE INSERTED; provided however, (1) that any person engaged in a supervisory, managerial, executive, or selling capacity who is regularly paid fifty ($50) dollars per week or more shall be excepted herefrom; and (2) that if the normal full-time working week of any employee as of the foregoing date has by the provisions of this code been reduced by more than thirty per cent, there may be a reduction in such weekly compensation of such employee not to exceed STATED per cent; and (3) that wage increases established under the President's Reemployment Agreement shall at least be maintained.

B. Specification of Rates by Classes of Workers

Schedules of minimum rates for specified classes of workers have been inserted in a small number of codes. This is permissible only under unusual circumstances; only if the schedules reflect true collective bargaining; only if they cover a small number of basing rates.

C. Provisions for Collective Bargaining

In view of the pronouncements of the Recovery Act on collective bargaining, it is clearly in accord with policy to provide for the use of collective bargaining as the method of handling wages in the higher brackets---this either with or without making use of Section 7(b) of the Act. The clause providing for collective bargaining should implement

the bargaining process so that it may be carried on in the light of exact information and clear definition of terms. (The safeguarding of workers representation, if needed, has been provided for in Public Resolution 44 of the last session of Congress and in the Executive Order establishing the National Labor Relations Board.) Phraseology that will meet the requirements of implemented collective bargaining is given, as an example, below.

The Code Authority shall immediately upon its organization require from each member of the industry a detailed and duly certified report, which shall be made within ninety days in such manner and form as may be specified by the Administrator, covering a description and classification of occupations in his plant or establishment together with the wages actually being paid therein. (The Administrator will provide an appropriate advisory agency on procedure to be followed in connection with this work.) The Code Authority shall transmit these reports so the Administrator who will cause them to be compiled in statistical form without individual indentification, and will make the same available to facilitate the processes of employment and collective bargaining.

The members of the industry, acting in conformity with the requirements of Section 7(a) of the National Industrial Recovery Act, shall thereafter by collective bargaining arrive at an equitable adjustment of all wages above the minimum and other conditions of employment. The parties concerned may, in their discretion, utilize the services of an appropriate industrial relations board in connection with such negotiations. The bargaining may be in terms of the separate units of an establishment, an extablishment as a whole, a region, or the nation. Pending the conclusion of this collective bargaining, the following provision shall govern wages above the minimum (insert the material in note 2 above.)"

Again Dr. Marshall drew attention to the confused state of affairs within the NRA concerning this important part of the wage structure, emphasized the ineffectiveness of most of the inoperative and cryptic provisions that had been incorporated in codes and the consequences induced by such conditions particularly the danger of conflict between employers and employees.

The suggestions contained in this draft were practically the same as those latent recommendations presented by Mr. Marshall to the various NRA advisory boards and divisions in May 1934. (*) The "Committee on the Description and Classifications of Occupations" recommended in the former was omitted. These latest recommendations also provided that "the bargaining may be in terms of the separate units of the establishment, an establishment as a whole, a region, or a nation". The utilization of an appropriate industrial relations board was likewise left to the discretion of the parties to the bargaining.

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(*) Cf. Section II-D-1-(a)- labor policy group.

Gustav Peck, Executive Director of the NRA Labor Advisory Board, immediately took exception to the handling of labor policy by the Advisory Council and requested the Chairman of the Council to defer its review until the proposals had been studied by the Labor Advisory Board. (*) On August 30, 1934, the Labor Advisory Board met and voted to request that action on this matter be deferred by the Advisory Council.

In the meantime Mr. Marshall had embodied the foregoing proposals in an NRA release (confidential) titled "Tentative Formulation of Labor Policy" which he forwarded just prior to his appointment on the National Industrial Recovery Board, to the several NRA Advisory Boards and Divisions and other NRA executives requesting comments, suggestions and criticisms. (**) This "Tentative Formulation of Labor Policy" indicated that it has no official standing but merely reflected the analysis of one person, presumable Mr. Marshall. The sections relating to "wages above the minimum" were, in general, a repetition of the proposals submitted by Mr. Marshall to the Advisory Boards and Divisions in May 1934. (***)

The relatively few written criticisms received would appear to indicate a state of indifference concerning this continuing issue. It is possible that certain executives preferred not to commit their ideas in written form. One division administrator merely pencil-endorsed the proposals as appearing satisfactory to him. All written comments by executives, sufficiently interested and conscious of the importance of the problems dealing with labor to study the plan and prepare an analysis, were not forwarded to Dr. Marshall. (****) The proposals, however, were not an NRA official act. Therefore a summary of the comments from individual executives is being omitted from this summary.

The comments of the Committee on Labor Policy, however, are of value to show the trend of thought of Mr. Marshall's immediate advisers and accordingly are quoted as follows:

"IV. WAGES IN THE HIGHER BRACKETS

Wages above the minimum are proper subjects for collective bargaining. Fair competition within an industry requires the stabilization of minimum rates for the industry as a whole for the various occupations or for classes of occupations so as to define uniform wage costs.

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(*) Cf. Memorandum to Dr. Walton H. Hamilton, Chairman of the Advisory Council by Dr. Gustav Peck, dated August 29, 1934.

(**) The National Industrial Recovery Board was created by Executive Order No. 6859, September 27, 1934, to administer Title I of the NRA. This board replaced the Administrator for Industrial Recovery appointed June 16, 1933.

(***) Cf. Section II - D - 1 - (a) - Labor Policy Group.

(****) It was customary to forward criticisms of this nature through the channels of higher authority. The higher authority could elect to "file" such recommendations as in hisopinion served no useful purpose.

To accomplish the above, it is therefore recommended that (1) the Administrator, through the proper advisory agency on procedure, shall, in cooperation with Code Authorities, obtain detailed and duly certified reports on actual wages paid for the various categories of labor in that industry. This information shall be available to facilitate the process of collective bargaining; and (2) the Administrator shall invite the employer and labor representatives in an industry or from a region to negotiate a regional or National agreement which shall be made mandatory upon such region or upon such industry if National under Section 7(b) of the Act.

In the absence of an approval of an agreement developed under the procedure set forth above, the following is recommended as the most clearly phrased statement concerning adjustment of wages above the minimum:

> Each employee shall be paid a wage rate (whether paid on a time rate, piece rate, bonus, commission or other basis) which will yield for a given occupation at least the same compensation for the shorter full-time week herein established that he could have earned for the same class of work for the longer full-time week (normal for that occupation in the establishment) as of DATE TO BE INSERTED; provided however, (1) that any person engaged in a supervisory, managerial, executive, or selling capacity who is regularly paid fifty ($50.) dollars per week or more shall be excepted herefrom; and (2) that if the normal full-time working week of any employee as of the foregoing date has by the provisions of this code been reduced in such weekly compensation of such employee not to exceed STATED percent; and (3) that wage increases established under the President's Reemployment Agreement shall at least be maintained." (*)

This further effort of Mr. Marshall is indicative of his persistent attempts to awaken the Administration to the necessity of arriving at some definite plan of resolving this problem.

(d) Electric And Neon Sign Industry Case

The next important situation in which the policy to be pursued relating to "wages above the minimum" was challenged, came about through the request of the electric and neon sign industry for an amendment to its code, approved August 24, 1934. Originally, both the management and labor elements of this industry had endorsed the

(*) Cf. Memorandum from the Committee on Labor Policy to the NRA Advisory Council, October 25, 1934. Comments of this Committee on Labor Policy were submitted to the individual members of the Advisory Council by memorandum of the executive secretary, April 17, 1935.

incorporation of a minimum rate of not less than $0.75 per hour for skilled workers. This provision, however, had been deleted from the approved code at the insistence of Alvin Brown, NRA Review Officer, who ruled it was contrary to established policy. The proponents agreed to this condition in order to hasten the approval of the code but petitioned for an amendment shortly afterwards. Ultimately this case was presented to the Labor Advisory Board on September 13, 1934, by Gustav Peck, Executive Director. (*)

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(*) Gustav Peck presented the problem as follows: "A very important matter of labor policy has grown out of our handling of the Neon Light Code. In this indsutry, which is about eighty percent organized, both unions concerned and the industry sponsored a wage for skilled workers of seventy-five cents, specifying exactly the occupations which are to receive no less than that minimum. In addition, the code carried a minimum of forty cents."

"The skilled rate was thrown out by Alvin Brown the Review Officer, on the ground that it is "opposed to NRA policy". The industry agreed to have it out only because they wanted a code and have since informed both the unions and the Labor Advisory Board that they are anxious to have it restored. A related and competitive industry, the Commercial Sign Code, also carries a skilled rate and that promises to be thrown out by Alvin Brown for the same reason."

"In the light of our experience with the effect of minimum rates upon average wages and especially the wages of the semi-skilled group not covered by union contracts, some of us have thought that we ought to make a concentrated effort to establish at least one more minimum rate in as many codes as possible. This notion that a second rate for skilled workers is not warranted by an interpretation of the National Industrial Recovery Act is of long standing among deputies. Alvin Brown says he is merely a Review Officer and Administrator and is not concerned with making policy; that this policy was established by the Administrator some time in October 1933. When that order was discussed in one of General Johnson's regular staff meetings, I raised the question as to whether this would prevent us from establishing one or two additional rates such as we have, for example, in the Men's Clothing Code. The General said it did not and he interpreted these additional rates as "basing points"."

"In my discussion with Alvin Brown yesterday, he said that that was not his interpretation; that by a basing point he meant a situation which is common in the extractive industries, where one rate might be established for surface workers and another for underground workers."

"I told him that this was an issue of very serious importance to us and that we would have to raise it for a ruling by the Administrator. I intend to draw up a fairly elaborate case in which I shall show how frequently we have been able to secure more than one minimum rate and the good effect upon the total situation that

And on September 20, 1934, the NRA Labor Advisory Board unanimously passed the following resolution:

> "Resolved that the Labor Advisory Board reiterate its stand in favor of established wages above the minimum and that a committee of the Board hold an early conference with Col. Lynch (NRA Administrative Officer), Leon Henderson (Economic Adviser to the National Industrial Recovery Board), Blackwell Smith (Assistant Administrator for Policy) and other members of the NRA Policy Board to ask for a ruling."

The following day a delegation of the Labor Advisory Board met with G. A. Lynch, NRA Administrative Officer, Blackwell Smith, Assistant Administrator for Policy, and representatives of the NRA Research and Planning Division to review NRA policy respecting "Wage above the minimum". As a result of this meeting the staff of the Labor Advisory Board were advised as follows:

> "This morning a delegation of the Labor Advisory Board met with Col. Lynch, Blackwell Smith and representatives of the Research and Planning Division, to review NRA policy with respect to "Wages Above the Minimum". Discussions lasted for about an hour and a half and it was agreed that there should be no fixed policy outline by the Administration; but that there is nothing in accepted practice to prevent Industry and Labor from agreeing upon more than one wage minimum if that is felt necessary for purposes mutually satisfactory to effect the aims of the Act."
>
> "While the emphasis was placed upon situations in which Industry and Labor agreed, the door is still left open for NRA to impose a second or third minimum. In the light of this open door policy, it is your responsibility to continue to make efforts to secure minimum wages for semi-skilled and skilled workers or for particular skilled occupations wherever possible and satisfactory to the outside labor advisers working with you.

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Footnote continued:

> this had. I also said if you could not have a second rate that there was not much point to the "equitable adjustment" clauses which are inserted in all codes. Brown agreed with that and said he would welcome another interpretation by the Administrator."
>
> "I hope that we can thrash this out at the next meeting and it is important enough for a special meeting early in the week before most of the Board members go West."

> Do not be deterred by any so-called policy issued last year."
>
> "Where you have an agreement with the Industry and you find that the Deputy Administrator is resisting your efforts to secure a satisfactory wage for skilled workers, be sure to call it to my attention." (*)

The Executive Director of the Labor Advisory Board also took steps to clear up any misunderstandings respecting the incorporation of minimum rates in codes for skilled workers and accordingly requested that the Assistant Administrator for Policy inform all NRA executives charged with the responsibility of developing or administering codes as follows:

> "I think it would be advisable to issue a statement for internal use regarding our understanding with reference to second and third minimum rates in a code. There are so many new deputies who go by the written word that our staff members have difficulty in pursuading them that the memorandum of October 1933 does not prohibit the insertion of a second or third rate. I have a memorandum before me written by a Division Administrator from which I quote the following:
>
> > "You are doubtless aware of the fact that there has been much discussion as to the advisability of writing into codes minimum wage scales only, and should the NRA ultimately adopt this idea, wage schedules for skilled and semi-skilled labor would have to be eliminated from codes, and to write into the code at this time such a provision might lead to troublesome complications in the near future.
>
> "If a Division Administrator holds this view, you can very well see how impotent staff members would be in combating fixed ideas of innumerable deputies. I have received many complaints from staff members in addition to the Neon Light case which we discussed in your office, and I think we will save ourselves a considerable amount of controversy and needless friction if a classifying statement were made by you as Assistant Administrator for Policy." (**)

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(*) Cf. Memorandum by Gustav Peck, Executive Director, NRA Labor Advisory Board to the Labor Advisory Board Staff, September 21, 1934.

(**) Cf. Memorandum by Gustav Peck, Executive Director, NRA Labor Advisory Board, to Blackwell Smith, Assistant Administrator for Policy, September 22, 1934.

The Assistant Administrator for Policy in turn forwarded this Memorandum to Leon C. Marshall, Deputy Assistant Administrator for Labor Policy, who commented that in his opinion, "no action need be taken in this matter", and that the Advisory Council was then "working on a codification of labor policy that would automatically take care of the situation." The substance of the understanding was not issued for the guidance of the NRA officials administering codes. The question of formulating definite policy on this subject was subsequently considered by the Advisory Council but no definite recommendations were made at the time of the Supreme Court decision on May 27, 1933.

(e) Questionnaire To The NRA Field Officers

The last important official act relating to "wages above the minimum" taken by the labor policy group took the form of a questionnaire to the several field offices of the NRA Compliance and Enforcement Division. The purpose of this questionnaire was to obtain information showing the experiences of the different field offices with the compliance and enforcement of provisions dealing with "wages above the minimum". (*) The activities, however, of the labor policy group ceased before the returns from this questionnaire were recorded. This matter, however, is discussed later under the functioning of the Advisory Council.(**)

Summarizing, it may be stated that while the labor policy group made a sincere effort and brought forth a bold programme for the solution of this problem, its production did not officially establish any new explicit policy for administrative guidance.

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(*) See Appendix "E" for complete questionnaire, in NRA Studies Special Exhibits - Work Material No. 45.

(**) Cf. Section II - D - 3 (b).

2. The NRA Office Manual

During the middle of 1934, the Administrator designated a committee of three to organize a compilation of NRA working rules for the purpose of eliminating "all conflicts and obscurities in existing Office Orders, Office Memoranda and Administrative Orders" and to "provide a single authoritative source of information in which can be found all current rules and regulations governing the organization, substantive, guides and procedure of NRA including Executive Orders of general application to NRA." These rules were issued in the form of the NRA Office Manual, the first parts of which were issued on August 29, 1934.

Section II treated the subject of "Substantive Guides", i.e., "the rules of substance which guide the use of administrative discretion by officers within the NRA." The introduction of this Section states:

> "The National Recovery Administration is endeavoring in light ot its experience to formulate general policies. This does not mean that every code in process and not approved at the time of the announcement of a general policy must conform - in the sense of including the type of provision favored by policy."

No expression of policy concerning "wages above the minimum" was stated. Two model code provisions were included as follows:

> Paragraph 1331.31
> "Within ___ days of the effective date hereof, (unless such adjustment has been made heretofore) each employer shall adjust the schedules of wages of his employees in such an equitable manner as will conform to the provisions hereinabove set forth, and still preserve wage differentials reasonably proportionate to those in effect prior to the effective date of this Code.

> Paragraph 1334.1
> "No employer shall make any reduction in the full time weekly earnings of any employee whose normal full time weekly hours are reduced by ___ percent, or less, below those existing for the four weeks ending _____ . When the normal full time weekly hours of an employee are reduced by more than said percent, the full time weekly wage of such employee shall not be reduced to more than one half of the percentage of hour reduction above said percent. In no event shall hourly rates of pay be reduced, irrespective of whether compensation is actually paid on an hourly, weekly or other basis, nor shall any wages be at less than the minimum rates herein provided." (*)

(*) The Office Manual was revised and enlarged following the issuance of the first parts. The sections dealing with "Wages above the minimum"

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It will be observed that the substance of paragraph 1331.31 merely expresses that some sort of a reasonably proportionate equitable adjustment is to be made within some stated period following the effective date of the code unless it has already been made. The provision is meaningless. Yet it was offered as a guide in spite of the fact that the NRA associate counsel had previously indicated that such provisions were impossible of interpretation. (1)

The provision set forth by paragraph 1334.1 is taken from the suggestions offered by the former "model" codes, and like the provisions in these "model" codes, it is likewise vague and deficient. This provision neither provides for an increase in nor the maintenance of former weekly earnings. It appears to merely repeat that hourly rates shall not be reduced and that the minimum wage provisions shall be observed and to provide for a partial maintenance of the weekly wages paid during a stated pre-code period.

3. The Advisory Council

On May 21, 1934, an Advisory Council was created consisting of the executive committees of the NRA Labor, Industrial and Consumers' Advisory Boards. The Order establishing this body stated that "all matters and documents heretofore referred, in any prescribed manner, to the Advisory Boards, will hereafter be referred in the same manner, to the Advisory Council". (2) Gradually this body assumed the function of developing policy. The policy groups, although not officially discontinued until November 14, 1934, actually ceased to function with the transfer of the executives in charge. (3)

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(1) Cf. Memorandum by Blackwell Smith, NRA Associate Counsel to Ralph A. Byers, March 16, 1934. See Section II-C-5, Model Codes of October 25 and November 6, 1933.

(2) Cf. NRA Office Order No. 89, May 21, 1934.

(3) Cf. NRA Office Memorandum No. 306, November 14, 1934. Deputy Assistant Administrator for Policy, George S. Brady, had been appointed an Assistant Administrative Officer on July 3, 1934. Deputy Assistant Administrator for Policy, Leon C. Marshall, had been appointed a member of the National Industrial Recovery Board and Assistant Administrator for Policy, Blackwell Smith, had been appointed Legal Adviser to the Board on September 27, 1934. (See Executive Order No. 6859, September 27, 1934).

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(*) Note continued from preceding page.
were not modified or added to as of May 27, 1935. Revisions to the "Substantive Guides" were compiled at the request of the Executive Secretary of the National Industrial Recovery Board under date of June 12, 1935. Inasmuch as these revisions appear to express the opinion of one NRA executive, the Review Officer, and were not issued for the guidance of the NRA during the life of the codes, they are not being considered in this discussion. See "Policy Statements Concerning Code Provisions and Related Subjects", Work Materials No. 20, National Recovery Administration, Division of Review.

(A) The Steel Casting Industry Case

On August 15, 1934, the Advisory Council released the first of its three individual decisions dealing directly with "wages above the minimum". This decision No. 19, relative to a question concerning the application of provisions in the code for the Steel Castings Industry set forth the following statement of policy for this specific case as reported by its committee:

"1. Your committee believes that NR has and needs to have no fixed policy against the establishment of wages above the minimum in the few industries where such an establishment is acceptable to those immediately concerned.

2. It is not the policy of the Administration to give the Code Authorities the power to classify labor in their industries and set minimum wages for each class apart from the procedures both of collective bargaining and of public hearing.

3. Your committee understands that the power conveyed to the Code Authority by Article VI, Section 5(b) of the Code applies to a particular form of equitable adjustment of wages above the minimum at the time of the initiation of minimum rates; and does not give the Code Authority power to maintain continuous classifications of labor and control over the minimum wages of each class.

4. Your committee regards the activity of the Code Authority in bringing about the prescribed increase in wages as an able struggle with a difficult problem. Nevertheless, in view of the importance of the issues involved, we recommend that the Division of Research and Planning review the rates established and report upon any inequities which may appear.

5. Your committee believes, however, that the form of the announcement made by the Code Authority tends to obscure the difference between the immediate adjustment undertaken and the permanent control over skilled wages in the industry which was neither undertaken nor, we believed, contemplated.

6. Therefore, your committee recommends that the Code Authority be requested to make clear to members of the Industry that the minimum wage rates announced and the classifications established were for the purpose of compliance with Section 5(b) of Article VI, and that the NRA does not give its approval to any Code intended to establish permanent labor classes or permanent labor rates, since activity of that sort is not authorized by the Act." (*)

(*) For Complete Decision see Appendix "F" in NRA Studies Special Exhibit-Work Materials No. 45

There are several items in this decision worthy of mention. Item No. 1 conveys no new thought. It is merely a re-statement of the decision reached at the conference with the Administrative Officer and the Assistant Administrator for Policy requested by the Labor Advisory Board on September 20, 1934, the results of which were not officially announced to all NRA executives. Moreover, to be acceptable to those immediately concerned: - management and labor, would ultimately mean an agreement through the process of collecti ve bargaining. Item No. 2, however, does indicate to some degree a change of policy from that in force when the "model" codes were issued for the guidance of industry and trade. (*) The provisions in the "model" codes for establishing minimum wages by occupations made no mention of collective bargaining. And it certainly indicates a change from the policy existing on June 27, 1934 at the time the Code of Fair Competition for the Plastering and Lathing Contracting Industry was approved. (**) The minimum rates in this code were established without resort to collective bargaining on a national scale. Item No. 2 also appears to disclose a contradiction with the proposed recommendations of Leon C. Marshall, Deputy Assistant Administrator for Labor Policy, presented for approval in May, 1934. At that time Mr. Marshall had proposed to empower the code authorities to designate committees on the description and classification of occupations in industry. In turn these committees were obligated to determine the occupational classifications in the industry and to report their findings to the Administrator. The Advisory Council was definite that it was not the policy of the NRA to empower code authorities to classify labor in industries and set minimum wage rates. Such a declaration, however, was difficult to reconcile inasmuch as the proponents of codes, frequently designated on approval of the code as the code authority, were permitted to specify the rates for minimum wages without resort to collective bargaining. The balance of this decision appeared to be a weak informative answer to the code authority that it was not empowered to propose or announce to the members of the industry any recommendations that resembled establishing specifications for occupational classifications for the industry or an equality of rates for occupations by wage districts. (***)

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(*) Cf. "Minimum Rates by Occupations" in "model" codes. See Section II-C-5.

(**) Cf. Section 1 of Article III of Supplement No. 14 of Code No. 244 for the Plastering and Lathing Contracting Industry provides minimum wage scales for plasterers, modelers, model makers, casters, lathers, and plasterers' laborers in each of three geographical areas.

(***) The provisions for "wages above the minimum" in the code for the steel castings industry is set forth in Subsection (b) of Section 5 of Article VI of the code. This "adjustment" provision appears to have been lifted from the code of fair competition for the Iron and Steel Industry. Wage districts are set up by Schedule B. This provision, which follows, appears to have been conceived to not only replace any type of bargaining but also to empower the Code Authority (the Directors of the Trade Association) to make wage determinations for the various classes of labor; "The rates of pay for classes of labor heretofore paid at a rate in excess of the rate heretofore paid for common labor shall be increased at least to the extent necessary to maintain, in relation to the minimum rates for common labor under the Code, the percentage relations heretofore existing (as determined by the experience of the several wage districts with the

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(b) Questionnaire to NRA Field Offices

It has been previously stated that the last important official act of the labor policy group was the forwarding of a questionnaire to the various field offices of the NRA compliance and Enforcement Division. On October 15, 1934, the assistant to the Executive Secretary of the National Industrial Recovery Board and a former assistant to the former Deputy Assistant Administrator for Labor Policy, prepared a summary of the chief points of interest contained in the replies. The "high-lights" of this summary indicate:

"1. Very few complaints have been received by our field officers concerning violations of clauses calling for adjustment of wages in the higher brackets.

"2. The fact that relatively few complaints have been received does not mean that workers are satisfied with the operation of these clauses. On the contrary, a goodly majority of the forty-five officers point out that there is widespread dissatisfaction among workers based on the feeling that adjustments to those earning more than the minimum have not been made and that consequently, there is a definite tendency for the minimum wages to become the maximum.

"3. The answer (to why there have been so few complaints) in most cases in which an answer was given, is fear. The employees are afraid to complain because of fear of losing their jobs. Ignorance of code provisions is another explanation given, while a third is a feeling that nothing will be gained by complaining. The suggestion was clear in one or two cases that there is no feeling of confidence in NRA's compliance machinery.

"4. That this feeling of dissatisfaction is justified to some extent at least, is indicated by the fact that approximately two-thirds of the responding offices quite definitely asserted widespread non-compliance with these clauses calling for adjustment of wages in the higher brackets.

"5. About a dozen offices expressed dissatisfaction with the replies received from Washington. Half of these complained that the replies were neither prompt nor clear cut.

"6. It is quite apparent from the replies to the ques-

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* (Cont'd from last page)
approval of the Board of Directors) between the rates of pay for such classes of labor and the rates of pay for common labor. The foregoing provision shall not be so construed as to require any number of the industry to make any increase in the rate of pay per hour to be paid by such member to any of its employees in any wage district that will result in a rate of pay per hour which shall be higher than the rate of pay per hour paid to employees doing substantially the same wage district by any other member of the industry which shall have increased its rates of pay per hour in accordance with such provision."

tionnaire that the Labor Compliance Officers themselves are interpreting and applying these clauses in quite varying fashions.

"7. It (is) quite significant that in response to a request for suggestions with regard to the use or non-use of these clauses or with regard to their meaning, only five field officers expressed the opinion that they were satisfactory as they stand. Sixteen offices plead for more clear and precise wording of these clauses, pointing out in most cases that they are not enforceable as presently worded.

"8. Four offices recommended the complete abolition of these clauses in favor of specified wage rates for wages in the higher brackets. Three other offices suggested abandonment of these clauses without putting anything in their place, while one other office suggested a procedure for collective bargaining as the substitution." (*)

This summary requires particular attention for it reveals conditions that are vital to the effective administration of the labor provisions of codes and the effectuation of the purposes of the Act. But the conditions disclosed by the replies were not generally diffused through the NRA for administrative guidance. Apparently the Advisory Council and the National Industrial Recovery Board considered a solution to this complexing problem of "wages above the minimum" was a matter for centralized consideration. In any event, no positive official action was taken. Apparently the Advisory Council and the NIRA elected to continue their consideration of the problem.

(c) Electric and Neon Sign Industry Case

The next major decision of the Advisory Council dealing with "wages above the minimum" was brought about by the Council's deliberations relative to the industry's proposed amendment of the Code for the Electric and Neon Sign Industry to include so-termed "basing points" for "skilled" workers. This problem had originally been presented to the labor policy group but had not been resolved at the time this group ceased functioning. (**)

In this regard it should be noted that the Advisory Council had selected a committee to explore the problem of "Wages above the minimum". This committee reported to the Advisory Council on November 1, 1934, as follows:

"Your Committee reports that it is in accordance with NRA policy to approve wage scales above the basic minimum for unskilled labor on any of the following grounds:

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(*) For complete summary see Appendix "E" in NRA Studies Special Exhibits--Work Materials No. 45.

(**)Cf. Section II - D -1 - (a).

1. Where a large proportion of workers in the Industry are skilled and the minimum for such is necessary to preserve their basic living standard.

2. Where such scales are necessary to safeguard fair competition in the Industry.

3. Where such scales are few and not elaborate.

4. Where such scales represent in general the concensus of both employers and employees.

5. Where such scales tend in general to allay rather than to excite labor disputes."(*)

And on November 3, 1934, the committee recommended that it consult with the various deputy administrators handling codes containing provisions for more than one minimum wage. (**) There is no record, however, that any definite action was taken on these recommendations regardless of the fact the powers of the Advisory Council were enlarged to include the making of recommendations to the National Industrial Recovery Board on its own initiative. (***)

Nevertheless, the report of the committee is significant. Heretofore, it was declared to be contrary to policy to include wage scales in codes of fair competition unless the rates were determined by the process of collective bargaining. No reference to collective bargaining was made in this report. The committee reported that the incorporation of wage scales above the basic minimum was in accordance with policy provided there was a large proportion of "skilled" workers in the industry and a minimum wage for such was necessary to preserve their basic living standards. Such a distribution of workers existed in all industries. (****) Furthermore the purposes of the NIRA were not only to preserve living standards but to improve living standards. The NIRA was also designed to promote fair competition. Either of the two reasons stated in Items 1 and 2 of the report for incorporating wage scales in codes was therefore sufficient for permitting wage scales to be incorporated in all codes.

With the benefit of the recommendations of its committee, the Advisory Council proceeded to make a further extensive examination of all phases of the electric and neon sign industry. (*****) During the course of its considerations it was pointed out that the workers in

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(*) Cf. Memorandum from the committee on wages above the minimum to the advisory Council, November 1, 1934.

(**) Cf. Memorandum from Gustav Peck to Edward George, Secretary Advisory Council, November 3, 1934.

(***) Cf. NRA Office Memorandum No. 703, November 14, 1934.

(****) Cf. The Significance of "Wages above the Minimum", Section I-B

(*****) Cf. Minutes of Meetings, Advisory Council, November 9, 1934.

this industry were, in general, highly organized and that management considered the establishment of a minimum for "skilled" labor desirable. A. Howard Myers, representing the Labor Advisory Board, called the Council's attention to the fact that the labor cost of the product represented approximately 50 per cent of the total and that the effects of severe price competition would undoubtedly be passed on to the worker. The question of whether minimum wage provisions were for a social purpose to insure a decent standard of living or were for the general improvement of labor standards and the increase of "purchasing power", was discussed. Consideration was given to the possibility that the proposed minimum of $0.75 per hour, if established by public law, might tend to rigidify conditions and perhaps act against those skilled workers who had been receiving wages in excess of this amount. In this regard the Labor Advisory Board's representative countered that the existing $0.40 per hour code minimum appeared to further aggravate such a condition. The Council finally voted in favor of the following specific recommendations:

> "The Council recommends that this particular amendment to this particular code be approved, with the proviso that the Deputy Administrator make certain that the wage rate set is not oppressive to members of the Industry in any area, and that this action is not in any way to be construed as an approval of the incorporation into the codes of general schedules of labor rates." (*)

This decision of the Advisory Council was forwarded to the National Industrial Recovery Board which transmitted its approval to the Administrative Officer on November 19, 1934. (**) On November 24, 1934, the proposed amendment including a so-termed "basing point" of $0.75 per hour for skilled workers was approved by the National Industrial Recovery Board. The report to the President by the Administrative Officer stated that the amendment was submitted "in order that the code may conform to the best policies governing labor" and that "the code as amended complies in all respects with the pertinent provisions of said Title (Title I) of said Act (The National Industrial Recovery Act)."

Repercussions were immediately noticeable upon this decision of the Advisory Council. The NRA Review Division considered that the National Industrial Recovery Board had, in effect, abrogated the longstanding and only official policy of record on this subject. (***) As a consequence the Advisory Council advised the Administrative Officer that the "recommendations of the Council arising out of the electric and neon sign case did not presume to write new policy but were intended merely to safeguard against undue departures from the policy of a single

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(*) Cf. For complete decision see Appendix "F", in NRA Studies Special Exhibits -- Work Materials No. 45.

(**) Cf. Memorandum from L. C. Marshall, Executive Secretary of the National Industrial Recovery Board to W. A. Harrison, Administrative Officer, November 19, 1934.

(***) Cf. Decision by the Policy Board, October 25, 1933.

basic minimum." (*) The amendment, however, was subsequently stayed indefinitely. (**)

(d) The Bedding Manufacturing Industry Case

The next and final major decision by the Advisory Council concerned the Code for the Bedding Manufacturing Industry, approved January 23, 1934. The vagueness and ambiguity of the provision for wages above the minimum which was coupled with provisions for mimimum wages in Section 1 of Article IV of this code had caused considerable disagreement. (***) This provision, particularly what was intended to be meant by the "longer work week prevailing prior to June 1, 1933", had been variously explained. The code authority had construed this language to mean each individual manufacturer's standard scheduled work week prevailing during the period from January 1 to June 1, 1933, but in no case less than a 48 hour week and had so declared to the industry on March 2, 1934.

The resultant confusion finally precipitated a labor dispute at the Atlanta, Georgia, plant of the Simmons Bed Company. Ultimately, a complaint reached the Regional Director of the National Labor Relations Board at Atlanta, Georgia and was forwarded to the Washington, D. C. office for consideration. Upon request of the National Labor Relations Board, the administration issued a formal interpretation on December 3, 1934, consisting of a question and ruling as follows:

> "Question: Does the above provision (basic wages) apply to pieceworkers and, if so, what is the method to be followed in computing the wages to be paid such workers under said section of said code ruling?
>
> Ruling: It is ruled that Article IV, Section 1 applies to piece-workers. The method of computing the wages of piece-workers in each individual plant is to multiply the piece rate paid prior to June 1, 1933, by the prevailing longer number of hours worked by each class of piece-workers in that individual plant prior to June 1, 1933, and divide the total thereof by 40." (****)

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(*) Cf. Memorandum from Willard L. Thorp, Chairman, NRA Advisory Council, to W. A. Harriman, November 30, 1934. See Appendix "F" for complete memorandum, in NRA Studies Special Exhibits - Work Materials No. 45.

(**) Cf. NRA Administrative Order No. 506-8, December 19, 1934.

(***) Section 1 of Article IV of the code reads: "No employee shall receive a lesser rate than is required to provide the same earnings for 40 hours of labor per week as was received for that class of work for the longer work week prevailing prior to June 1, 1933; provided, however, that no factory employee, whether remuneration is based upon an hourly or piecework or incentive plan, shall receive less than a minimum of thirty cents per hour in the South, and thirty-five cents per hour in the North; and further providing that all other employees whose remuneration is based upon a weekly or monthly rate shall receive not less than a minimum of $15.00 per week...."

(****) Cf. Administrative Order No. 219-16, December 3, 1934.

An examination of this interpretation issued over ten months after the provision became effective, at once discloses the misleading deficiency in the first part of the question and which was apparently ignored in the answer. Section 1 of Article IV was not limited to piece-workers, but applied to all employees. It further discloses the apparent absence of a complete comprehension of the extent of the whole issue. The obscurity of the provision extended beyond its application to piece workers. Its application to other workers required an explanation. What constituted the "longer work week prevailing prior to June 1, 1933" was also an issue. The National Labor Relations Board's request did not appear to limit the issue. The release of this interpretation was immediately followed by a further request of the National Labor Relations Board to interpret the interpretation, particularly the meaning of the phrase--"the longer work week prevailing prior to June 1, 1933". While the deputy administrator was deliberating as to the appropriate method of procedure and endeavoring to formulate a new interpretation sufficiently clear and all-inclusive to resolve the problem, the code authority for the industry, released another explanation on January 11, 1935, as follows:

> "The longer work week prevailing for each class of work prior to June 1,1933, shall therefore be interpreted to mean a 48 hour week which was determined by a national survey to be the longer work week prevailing in the industry prior to June 1, 1933."

In this connection, it is to be noted that altho the former interpretation had been issued to the code authority on December 3, 1934, the Administration was conscious of the fact that it had not been generally issued to all members of the industry and consequently not posted with other labor provisions until each unit of the industry received its official labor provisions poster. (*)

Eventually, the deputy administrator drew up a set of proposals accepting the code authority's 48 hour week base and embodying an individual plant adjustment as follows:

> "The words 'the longer work week prevailing prior to June 1, 1933', as found in Article IV, Section 1, of the Bedding Manufacturing Code, are hereby interpreted to mean a 48-hour week.
>
> "The entire code provision is hereby interpreted to mean that no employee shall receive a lesser hourly or piece-work wage than would be required to provide the same weekly earnings for 40 hours of labor per week as he would receive if he worked 48 hours of labor per week at the hourly or piecework wage paid his class of labor in the same plant prior to June 1, 1933, provided, however, that no factory employee, whether remuneration is based upon an hourly or piece work or incentive plan, shall receive less than a

(*) Interpretations of the labor provisions of codes were required to be posted as required by Administrative Order No. 32, September 1, 1934, amending Administrative Orders Nos. 6 and 7, dated February 13th and 28th, 1934, respectively.

minimum of thirty cents per hour in the South, and thirty--five cents per hour in the North and further providing that all other employees whose remuneration is based upon a weekly or monthly rate shall receive not less than a minimum of $15.00 per week.

"The method of computing an employee's adjusted hourly or piecework wage, accordingly, is to multiply the hourly or piecework wage for his class of labor in the same plant prior to June 1, 1933 by 48 and divide by 40. The resulting hourly or piecework wage will constitute an increase of 20% over the hourly or piecework wage for the same class of labor in the same plant prior to June 1, 1933, and may be regarded as satisfying code requirements provided it is not less than the 30¢-35¢ minima required by the Code.

"The first explanation of this provision given by the Code Authority is hereby disapproved, and the second is hereby affirmed. So much of the interpretation, issued by the National Recovery Administration as Order No. 219-16, as in conflict with or inconsistent with this interpretation, is hereby superseded."

While this second proposed interpretation appears to have been a studied attempt to settle the issue, it nevertheless invites inquiry of the doubtful legal basis of establishing a 48 hour week as the longer work week prevailing prior to June 1, 1933. Due to objections to the approval of these proposals, principally by the NRA Legal Division and the NRA Review Officer, the Advisory Council, at the request of the Labor Advisory Board, took this matter under consideration and on April 1, 1935, issued its decision to the National Industrial Recovery Board with the following recommendations:

"(1) As the code did not expressly stipulate how the prevailing work week prior to June 1, 1933 was to be determined, it is recommended that the general work week of the industry, arrived at through the industry's survey, be accepted as the needful standard.

(2) It is therefore also recommended that the proposed interpretation of the Deputy Administrator be approved, with the following qualifications:

(a) That the facts of the Code Authority's investigation upon which the interpretation is based should be written into the body of the interpretation.

(b) That the sentence in the last paragraph, rescinding any part of Order No. 219-16, as might be in conflict with this new order, be broadened also to rescind any part or parts of the code authority's previous interpretations of this provision as might be inconsist-

ent with this new order.

(3) It is recommended that the controversial code provision governing wage rates above the minimum should also be revised in the interests of clarity and definiteness when the whole code is revised after passage of the new Act." (*)

Finally, a second and final interpretation was approved and issued on May 13, 1935, incorporating the recommendations of the Advisory Council. (**)

The foregoing discussion affecting the leading manufacturing industry is a good example of the complexity of the whole problem, the difficulties encountered in administration and the seeming inability of the Administration to get at the root of the problem in an orderly, complete and expeditious manner.

Summarizing the activities of the Advisory Council, it may be stated that no explicit policy on this important subject was officially announced as a result of its activities. (***) On the contrary the decision of the Advisory Council on the electric and neon sign code, to the extent that it appeared to confuse the long-standing policy of October 25, 1933, plus the apparent inertness of the administration to take any positive steps to clear up this recurring and continuing issue, tended to only further aggravate the chaotic state of affairs.

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(*) For complete decision see Appendix "F" in NRA Studies Special Exhibits - Work Materials No. 45.

(**) Cf. NRA Administrative Order No. 219-35, May 17, 1935.

(***) Decisions of the Advisory Council were in fact recommendations to the Administrator or the National Industrial Recovery Board. They obtained official status only if and when they were officially approved.

F. IMPLICIT POLICY

Implicit policy may be termed the guiding principles resulting from the utilization of administrative discretion:- discretion largely exerted by the deputy administrators charged with the responsibility of developing voluntary codes of fair competition and crystallized in the provisions incorporated in approved codes or amendments to codes and subject to the discretionary approval or disapproval by higher authority, i.e., division administrators, the Administrative Officer, the Administrator and the President. (*) The acts resulting from the discretionary approvals or disapprovals of these higher authorities likewise created implicit policy. Hence, implicit policy dealing with "wages above the minimum" may be best traced through the provisions finally approved in codes of fair competition or amendments thereto.

1. An Analysis of the Code Provisions

The variety of the provisions incorporated in codes of fair competition was numerous, indicating the extent to which administrative discretion was employed in approving provisions for this important part of the wage structure Nevertheless, policy appeared to dictate that some provision should be included. As a consequence all but 13 of the 555 basic NRA codes and the 19 AAA-NRA-LP codes in effect on May 27, 1935, contained some sort of a provision for "wages above the minimum". Exact meanings of the provisions, however, were frequently obscured by ambiguities, contradictions, deficiencies and border line situations.

Such conditions complicate a separation of the various provisions and clauses into classifications that express their probable content and objectives. Leon C. Marshall, during his activities as NRA Assistant Deputy Administrator for Policy and Executive Secretary of the National Industrial Recovery Board, organized a compilation of the hour and wage provisions incorporated in the basic NRA and joint AAA-NRA-LP codes, approved as of December 1934. (**) Inasmuch as Dr. Marshall's segregation represents "an irreducible minimum if a realistic examination is to be made of the interacting wage provisions of particular codes", notwithstanding that "even twelve classes fail to do justice to the complexity of the situation that exists in this vitally important aspect of wage structure", it would appear that for the purposes of this discussion Dr. Marshall's groupings are sufficient with one exception. (***) The first major grouping: "Wage Schedules and Basing Points", has been further broken down into two sub-divisions, i.e., "wage schedules" and "basing points". (****)

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(*) The National Industrial Recovery Board replaced the Administrator by Executive Order No. 6854, September 27, 1934

(**) This compilation was published by the Brookings Institution. Cf. "Hours and Wages in NRA codes" by Leon C. Marshall, The Brookings Institution (1935).

(***) Cf. "The National Recovery Administration: An Analysis and Appraisal" by The Brookings Institution, (1935).

(****) Cf. "The Content of NRA Administrative Law with Reference to Hours and Wages" prepared by Roth Reticker, Division of Review, National Recovery Administration.

Provisions for "wages above the minimum" in 52 basic NRA codes and 1 AAA-NRA- L.P. code, affecting about 6.0 millions of workers, were included in the first major classification, i.e., wage schedules and basing points.(*) Of these 53 codes, all but 7 included some provision complementary to the "wage schedule" or "basing point" purporting to provide additional protection, e.g., the code for the purporting to provide additional protection, e.g., the code for the coat and suit industry also includes a provision for maintaining weekly earnings. "Wage Schedules" were incorporated in 24 codes and "basing points" in 29 codes.

Oddly enough, the issue involving the incorporation of "wage schedules" and "basing points" received more attention than any other issue dealing with "wages above the minimum" and was the only subject covered by an official formal declaration of explicit policy. Notwithstanding the prohibition against "wage schedules" or the inference that "basing points" were frowned upon by the Policy Board decision of October 25, 1933, approximately 10 per cent of all the approved codes contained a provision of this classification.

The second major classification, "Maintain Weekly Earnings" accounts for 148 basic NRA codes and 18 AAA-NRA-L.P. codes, affecting about 9.8 millions of workers. Provisions, designating a maintenance of former weekly wages in whole or in part and sometimes reinforced by an additional requirement, are grouped in this major classification. Provisions under this major classification may be separated into three general sub-divisions: (1) provisions providing for the maintenance of former weekly earnings plus an added requirement; (2) provisions providing for the maintenance of former weekly earnings and (3) provisions providing for the partial maintenance of former weekly earnings.

The provision contained in Section 3(c) of Article II of Code No. 13 for the Fishing Tackle Industry is an example of the first type under this major sub-division. The provision in the code for this industry is as follows:

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(*) Cf. Section II-C-4, The Policy Memorandum of October 25, 1933 for the meaning of the terms "wage schedule" and "basing point". In the distribution of codes, the code for the Construction Industry has been considered as a "wage schedule" code, regardless of the fact that wage rates established for an occupational classification or an area, e.g., for plasterers or electricians or for New York City or Philadelphia, Pennsylvania, tend to influence the rates for other occupational classifications or areas and accordingly could be considered as "basing points" for other classifications or areas. The code for the Petroleum Industry has been treated as three codes and listed accordingly under three subdivisions. For one division of this industry, i.e., the "derrick and rig building, drilling, production, refinery, and pipe line operations" division, the code provides a "wage schedule" with rates for the two main occupational classifications of mechanical employees.

"The amount of difference existing on July 15, 1933, between wage rates paid various classes of employees receiving more than the established minimum wage shall not be decreased; and in no event shall any employee be paid a less wage for a work week of forty (40) hours than such employee was receiving for the same class of work for the longer week prevailing prior to the effective date of this code."

This general type of provision was incorporated in 31 codes, affecting 1343.6 thousands of workers.

The provision contained in Section 3 of Article IV of Code No. 79 for the Novelty Curtains Draperies, Bedspreads, and Novelty Pillow Industry is an example of the second type under this major sub-sivision. The provision in the code for this industry is as follows:

"The compensation for employment now in excess of the minimum wages herein provided shall not be reduced notwithstanding that the hours worked in such employment shall be hereby reduced, and rates of pay for such employment shall be increased by an equitable readjustment of all pay schedules."

This general type of provision was incorporated in 74 codes, affecting 5324.45 thousands of workers.

The provision contained in Section 2 of Article IV of Code No. 201 for the Wholesale or Distributing Trade is an example of the third type under this major sub-division. The provision in the code for this trade is as follows:

"No employee whose normal full-time weekly hours prior to July 1, 1933, are reduced by less than 20% shall have his or her full-time earnings reduced. No employee whose normal full-time weekly earnings are reduced 20% or more shall have his or her full-time weekly earnings reduced by more than 10%."

This general type of provision was incorporated in 35 codes, affecting 3041.9 thousands of workers.

Provisions of the first type of this major classification appear to be an adaptation of the provision contained in the President's Re-employment Agreement and the provision contained in the Executive Order approving Code No. 1 for the Cotton Textile Industry. Provisions of the second type are and adaption of the provisions in the President's Re-employment Agreement. Provisions of the third type appear to follow the substance of the "model" code of October 25, 1933. All three types are subject to the same criticisms as the provisions from which they were abstracted.

The third major classification, "Maintain Differentials", accounts for 54 basic NRA codes and 1 AAA-NRA-L.P. code, affecting 1738.9 thousands of workers. The maintenance of former differentials, customary differentials, long-established differentials or some such equivalent, forms the basis of this classification. The provision contained in Section 2 of Article VII of Code No. 9 for Lumber and Timber Products Industry is an example of this type. The provisions in the code for this industry is as follows:

"The existing amounts by which minimum wages in the higher paid classes, up to workers receiving $30.00 per week exceed minimum wages in the lowest paid classes, shall be maintained."

Provisions of this type follow the Executive Order approving Code No. 1 for the Cotton Textile Industry and accordingly do not necessarily guarantee an increase in nor the maintenance of weekly earnings.

The fourth major classification, "Adjustment Provisions", accounts for more codes than any other classification. This group consisted of 213 basic NRA codes and 3 AAA-NRA-L.P. code, affecting 3107.7 thousands of workers. Provisions basicly providing for an "adjustment" of wages comprised this classification of generally indefinite and inoperative provisions. The provisions of this major classification may be segregated into four general types: (1) provisions for an "adjustment" of wages to maintain equitable differentials; (2) provisions for an "equitable adjustment" to be interpreted in accordance with the President's Reemployment Agreement; (3) provisions for an "equitable adjustment" plus other requirements, e.g., no reduction in hourly rates and (4) provisions for an "equitable adjustment", only.

The provision contained in Section 3 of Article IV of Code No. 306 for the Fishery Industry is an example of the first type under this major classification. The provision in the code for this industry is as follows:

"In order to maintain fair differentials between employees an equitable readjustment in rates of pay shall be made in cases of employees who on June 15, 1933 received more than the minimum rates of pay then prevailing; but in no case as a part of such readjustment shall hourly rates be reduced."

This general type of provision was incorporated in 27 codes, affecting 528.1 thousands of workers.

The provisions contained in Section (d) of Article IV of Code No. 27 for the Textile Bag Industry is an example of the second type under this major classification. The provision in the code for this industry is as follows:

"Employers shall not reduce the compensation for employment now in excess of the minimum wages hereby agreed to (notwithstanding that the hours worked in such employment may be hereby reduced) and shall increase the pay for such employment by an equitable readjustment of all pay schedules. This clause shall be construed in the same manner as paragraph 7 of the President's Reemployment Agreement has been interpreted by the National Recovery Administration in Interpretations Nos. 1 and 20, and subsequent interpretations."

This general type of provision was incorporated in 12 codes, affecting 64.9 thousands of workers.

The provision contained in Section 2 of Article IV of Code No. 66 for the motor bus industry is an example of the third type under this major classification. The provision in the code for this industry is as follows:

"The rates of pay of employees whose hours of employment have been reduced by the provisions of this Code shall be increased by an equitable readjustment and the rates of pay of employees whose hours have not been reduced shall not be decreased, as a result of this Code, below those in effect in the week ending June 17, 1933."

This general type of provision was incorporated in 134 codes, affecting 1081.2 thousands of workers.

The provision contained in paragraph 3 of Article II of Code No. 17 for the automobile manufacturing industry is an example of the fourth type under this major classification. The provision in the code for this industry is as follows:

"Equitable adjustment in all pay schedules of factory employees above the minimums shall be made on or before September 15, 1933, by an employers who have not heretofore made such adjustments, and the first monthly reports of wages required to be filed under this Code shall contain all wage increases made since May 1, 1933."

This general type of provision was incorporated in 43 codes, affecting 1433.5 thousands of workers.

The foregoing four types of "adjustment" provisions are nothing more than modifications of the provision in the President's Reemployment Agreement. Unfortunately, the discretion used in approving the modification failed to recognize or in any event remove the legal impracticability of the provision, itself.

The fifth major classification, "No Positive Provision", accounts for 90 basic NRA codes and 2 AAA-NRA-L.P. codes, affecting 2325.5 workers. Codes including no positive provision for "wages above the minimum" are included in this classification and are grouped into three general types.

The provision contained in Section 5 of Article IV of Code No. 119 for the newsprint industry is an example of a provision embodying a "statement of policy". The provision in the code for this industry is as follows:

"The wage rates of all employees receiving more than the minimum rates herein prescribed shall be reviewed and such adjustments, if any, made therein as are equitable in the light of all the circumstances. Within 90 days after the effective date hereof, the Code Authority shall report to the Administrator the action taken by all members of the industry under this section."

This general type of provision was incorporated in 63 codes, affecting 1353.0 thousands of workers.

The provision contained in section paragraph (e) of Article III of Code No. 4 for the electrical manufacturing industry is an example of a provision requiring a "report", only. The provision in the code for this industry is as follows:

> "Not later than ninety (90) days after the effective date the electrical manufacturing industry shall report to the Administrator through the Board of Governors of National Electrical Manufacturers Association the action taken by all employers in adjusting the hourly wage rates for all employees receiving more than the minimum rates provided in paragraph (b) of this Article."

This general type of provision was incorporated in 11 codes, affecting 517.0 thousands of workers.

In 13 codes, affecting 455.5 thousands of workers, there was no provision for "wages above the minimum". This group of codes comprised the third type under the fifth major classification.

The absence of any positive provision for "wages above the minimum" in this fifth major classification indicates that as early as August 4, 1933, and as late as July 13, 1934, in the process of codification, administrative discretion appeared to permit considerable freedom in the choice of the provisions, if any, that might be incorporated in codes to protect this important part of the wage structure. (*) It is possible that the deputy administrators under whose jurisdiction this particular group of codes was developed, with the support of the higher authority in the NRA, considered that the industries in this group were "peculiar" and therefore demanded special consideration. Such a statement, however, must be considered as stated, i.e., a possibility. It is introduced because of the reference to the "peculiarities" of an industry as the reason frequently offered for the inclusion or omission of some particular provision.

## G. THE POLICIES OF THE NRA ADVISORY BOARDS, TECHNICAL DIVISIONS AND THE REVIEW DIVISION

No discussion of NRA policy on any subject would be complete without a resume of the attitudes of the three advisory boards, the two technical divisions and the Review Division. To some extent, at least, each acted as a pressure group within the Administration. The product of this pressure, however, was evaluated not only in terms of an intelligent estimate of the circumstances. Its reception frequently depended on the disposition of the recipient to properly consider the situation in the face of more formidable, but not necessarily rational, pressure of a competing group. Expediency coupled with a "laissez faire" attitude in some quarters rather than long range planning frequently appeared to be the guiding influence.

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(*) The Code for the Electrical Manufacturing Industry was approved August 4, 1933. The Code for the Dental Goods and Equipment Industry was approved July 13, 1934.

Due to the nature of the subject, it has been necessary to set forth in numerous instances the attitude of the Labor Advisory Board, the Legal Division, the Review Division, and the Compliance and Enforcement Division. Aside from these specific references, however, it would also seem essential to cite other references that disclose the direction of thought of the several advisory and staff groups.

1. The Labor Advisory Board

The Labor Advisory Board held that the incorporation in codes of several so-termed "basing points" providing minimum rates for skilled workers would tend to promote fair competitive conditions and to increase the money earnings of the workers affected. On the other hand, it opposed provisions that tended to hamper the free play of genuine collective bargaining or that jeopardized the jurisdiction of real employee unions. It opposed the administration of collective bargaining or industrial relations activities by code authorities appointed by and from management only. It opposed the union of collective bargaining activities with other industrial relation matters. It advocated any and all activities to promote the use of the instrument of Section 7(b) of the Act.

As early as 1934, the Labor Advisory Board, after a comprehensive survey of the existing situation as represented by the various code provisions and the action taken by the code authorities and the Administration, sensed the weakness of the labor provisions in the NRA in the light of developing opinion and summarized its recommendations for future legislation in its memorandum of December 15, 1934 to the National Industrial Recovery Board. This memorandum emphasized the following:

1. The majority of workers covered by codes have been left to the protection of some wishful thinking clause calling for an equitable adjustment.

2. The result has produced an unfair competitive situation in the wages paid in many industries, often at the expense of those plants who were paying affair wage scale before the NRA.

3. In many plants the minimum wages became the maximum.

4. In other plants the upper brackets of wages were reduced to make up for the increased wages of those brought up to the new minimum, or even to pay the wage bill of the workers re-employed by reason of the hours reduction.

5. That only by establishing separate minimum for common, semi-skilled, and skilled labor can an approach to a practicable solution of this problem be found.

6. That thus far very little effective work has been done to establish an adequate programme for the collection of nation-wide statistics.

7. That even less effective have been efforts looking toward real industry and inter-industry planning on a long range scale. (*)

Further evidence of the Labor Advisory Board's appreciation of its responsibilities and its efforts respecting the necessity for the protection and control of wages for all workers and toward the findings of a solution to this problem, is disclosed by its Memorandum No. 7, dated April 22, 1935, on the subject of "Equitable Adjustments". (**)

2. NRA Industrial Advisory Board

The NRA Industrial Advisory Board was set up to represent the interests of management and as such it probably exerted the greatest pressure of any group interest within the Administration to that of the NRA Labor Advisory Board. Its policy respecting this problem is summarized in a report prepared by Alfred G. Son, Resident Industrial Adviser, dated July 16, 1935, as follows:

"The Board's policy at the outset of NRA seemed to be one of agreement with the principle of wage classifications above the minimum. However, as the problem arose in its application to specific industries, the Board's policy seemed to be that while "wages above the minimum" might have a place in certain industries, any agreement by the Board to their inclusion in a specific code might operate as an opening wedge for their inclusion in all codes, and, therefore, except in one or two instances in the course of the past eighteen months, the Board's policy has been definitely opposed to the inclusion of any provision for wages above the minimum in any Codes." (***)

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(*) See Appendix "G" in NRA Studies Special Exhibits - Work Materials No. 45, for NRA Release No. 9287, December 17, 1934. Cf. Reference to Executive Order No. 6479 and Administrative Order No.X-10 in Section II-C-6. See also "Issues within the Problem of Wages in the Higher Brackets" in Section II-D-1(a). Cf. Reference to industry and trade analysis in Section II-D-1(a). See also comments of the Committee on Labor Policy in Section II-D-1(c).

(**) For complete memorandum (and "model code" provisions referred to) see Appendix "G", in NRA Studies Special Exhibits - Work Materials No. 45.

(***) For complete report and opinions of the Industrial Advisory Board - see Appendix "H", in NRA Studies Special Exhibits - Work Materials No. 45.

It must be understood, however, that all outstanding industrialists did not subscribe to this policy of the NRA Industrial Advisory Board. In a nation-wide radio address on October 9, 1933, Edward A. Filene, a brother of Lincoln Filene, who was a member of the Industrial Advisory Board, stated:

"If Labor and the rest of our people had wages high enough to enable them to buy the products of their work, then everyone would find work with fair pay, and prosperity would return bringing fair profits to employers.

"If wages were taken out of competition and every employer knew that every direct or indirect competitor had to pay the same wages of adequate buying power that he himself must pay, then the blind opposition of some of us employers to adequate wages would disappear. If wages were taken out of competition, then we employers would be obliged to make the higher wages pay by improving our technique and our management of our businesses and especially by fighting the enormous wastes that still exist in distribution and in 80% of our production in this country. If this were done, then for the first time we employers would find that our improvements in our businesses would be met by adequate buying power of our customers instead of as so often has happened in the past that these improvements with their increased output met a buying power that was so inadequate that our surplus production, largely due to our improvements, resulted only in flooding the markets, lowering prices and killing our legitimate profits.

"On the eve of the meeting of the American Federation of Labor recently, William Green, its President, set as an ultimate goal a union membership of 25,000,000.

"I have been an employer throughout my life. My reaction to this labor objective--which is startling to many--therefore may seem strange and paradoxical.

"I think that employers, as a body, and in their own interest should hope that labor organizations realize their ambition to enroll twenty-five million members in union ranks.

"It would mean stability. It would mean prosperity. It would mean steady buying power, it would mean a solid foundation on which business could build." (*)

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(*) Cf. NRA Release No. 1076, October 10, 1933.

3. The NRA Consumers' Advisory Board

The NRA Consumers' Advisory Board's attitude on this subject appears to be revealed in an address on January 30, 1934, by Dr. Thomas C. Blaisdell, Jr. before the public hearings on employment provisions in codes of fair competition, as follows:

> "We do not believe that classified wage-scales should be made a general feature of the present code structure. Enforcement of such above-the-minimum rates is sufficiently difficult even in trades where labor is strongly organized. In unorganized ones it is very unlikely that it can be accomplished. But our judgment does not rest entirely on administrative expediency. There are inherent difficulties in establishing "fair" scales of wages. In this realm we approach the same problems which are found in other forms of price fixing. On this view, the matter is one for the future. If the minimum wage becomes in practice the maximum, the remedy should be found through collective bargaining--not through the code machinery." (*)

4. The Legal Division

The positions (for there appeared to be more than one this issue) taken by the NRA Legal Division have already been mentioned beginning with the NRA General Counsel's (Donald A. Richberg) edict stating that the NRA did not permit the incorporation of "wage schedules" or "basing points" in the Construction Code and the NRA Associate Counsel's (Blackwell Smith) apparent contradictory declaration which permitted the incorporation of six "basing points" in the Code for the Plumbing Contracting Division of the Construction Industry. The NRA Legal Division, although seemingly unable to decide and set forth in unequivocal terms the legal issues involved, was nevertheless drawn into this problem at each recurring situation. Furthermore, the NRA Legal Division was familiar with the complications of enforcement of the cryptic "adjustment" provisions. It failed, however, to prescribe any definite policy of its own. Just before the Supreme Court decision on May 27, 1935, it undertook a study of the subject. (**)

5. The Division of Research and Planning

Altho the NRA Division of Research and Planning presumably held to the formal policies of the Administration, it is found that it frequently advanced individualistic ideas. Its report on the Proposed Code for the Men's Neckwear Industry is an example. This report reads in part as follows:

> "From the practical economic point of view the Research and Planning Division believes that detailed wage scales, whether piece or time, are decidedly unwise for the following reasons:

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(*) Cf. The Consumer Interest in Employment Policy by Thomas C. Blaisdell, Jr., Executive Director, Consumers' Advisory Board at the Public Hearings on Employment Provisions in the Codes, January 30, 1935.

(**) See Appendix "I" for memorandum by George Bronz, Assistant Counsel to L. R. C. Smith, NRA Legal Division, General Coordinator, April 23, 1935, in NRA Studies Special Exhibits - Work Materials No. 45.

1. They make much more difficult the task of enforcement and so tend to lessen respect for the National Recovery Administration.

2. They establish rigidities in the economic structure which tend to make it less flexible or adaptable to technological, style, and economic changes. Classified minimum piece rates are much more vicious than comparable hourly rates in this respect, for they remove all incentive which the manufacturer may hope to gain with better machinery and finer sub-division of labor.

3. They are likely to penalize individual concerns who have invested large amounts of capital to simplify operations and who are organized with an unusually fine division of labor or who define operations in a non-standard way for one reason or another.

4. Such classified wage rates tend strongly to act as limitation on earnings." (*)

6. The Review Division

The Review Division created by NRA Office Order No. 68, February 8, 1934, was established to review the consistency or inconsistency with established "policy" of recommendations and proposals by the staff units of the NRA and by the NRA executives charged with the responsibility of developing and administering codes of fair competition. It did not initiate policy.

As a facility to its functioning and its scrutiny of codes and other documents, the Review Division prepared a compilation of "established policy". This compilation was prepared in July 1934 and was added to as new principles were proclaimed and new situations arose. (**) The compilation, however, was not generally distributed to all officials nor units of the NRA for their guidance. And although certain of the principles set forth in this compilation were incorporated in the NRA Office Manual, the "Sustantive Guides" of this Manual did not include any expression of policy on this subject.(***)

The compilation of policy of the Review Division respecting "wages above the minimum" is unique to the extent that no statement of policy appears on this topic, except that part dealing with "wage schedules" and "basing points". In regard to the incorporation of "wage schedules", the Review Division affirmed the decision of the Policy Bard of October 23, 1933 with the added qualification that it was contrary to "established

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(*) See also Appendix "J" in NRA Studies Special Exhibits - Work Materials No. 45.

(**) Cf. "History of the Review Division, February 6, 1934 to June 16, 1935", Work Materials No. 19, National Recovery Administration, Division of Review (December 1935). Cf. Appendix "C" for extracts from this compilation dealing with "wages above the minimum", in NRA Studies Special Exhibits - Work Materials No. 45.

(***) Cf. Section II-D-2, The NRA Office Manual

policy" to include wage rates for so-termed "skilled" workers unless such rates were determined by collective bargaining between truly representative groups of employers affected by the code. Such a procedure required a determination by collective bargaining on a national basis. But such a procedure was not always observed as has been shown in the previous discussion of the development of policy. (*)

H. THE CODE PLANNING COMMITTEE

The activities of another group, the Code Planning Committee, set up within the Administration during the period of hearings and debates of the 74th Congress concerning the extension of the National Industrial Recovery Act, also requires consideration in the discussion of NRA policy. This committee was organized on April 17, 193 by Prentiss L. Coonley, Code Administration Director, altho there does not appear to be any official order authorizing its formation. Notwithstanding, its importance was stated by its Chairman who announced "that this joint Board (the Committee) would be considered as important as any group working on the problem (suggested policies and limitations for code drafting) and that all questions affected by its endeavors would be referred to it." (**)

At this time the Administration was confronted with attacks from both labor and management for its apparent failure to bring about "recovery". It had also come to the realization that the success of the industrial control programme required that (1) "we must rightly move to correct some things done or left undone", (2) "we must work out the coordination of every code with every other code", (3) "we must simplify procedure", (4) "we must obtain current information as to the working out of code processes", (5) "we must check and clarify such provisions in the various codes as are puzzling to those operating under them", and (6) "we must make more and more definite the responsibilities of all of the parties concerned." (***)

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(*) Cf. Discussion regarding the incorporation of "basing points" in the code for the Plumbing Contracting Division of the Construction Industry in Section II-D-1-(a), Labor Policy Group and regarding the rates included in the Plastering and Lathing Contracting Division of the Construction Industry in Section II-D-3(a), the Steel Casting Industry Case.

(**) Cf. Minutes of Meeting, April

(***) Cf. Message of the President to the Congress of the United States, February 20, 1935.

Such a charge appeared to be a challenge to the apparent lack of an effective administrative organization and of a programme promoting orderly planning and coordination. (*) Aside from the major problem of determining a policy orienting labor to the general scheme, the problems of the enforcement of labor provisions of codes and of a proper and planned scheme for the cohesive arrangement of actual industries and trades versus the unregulated grouping of units of businesses by codes, on which the former so intimately depended, appeared to be harassing situations endangering the whole system of codification.

The minutes of the first meeting of the group of executives, chiefly deputy administrators, states that the purposes of the committee is "to study code reorganization, to draft a new model code, to suggest policies regarding codes and to study code consolidation." These purposes, however, appear to have been somewhat delimited. The first report of its organization states that "it was finally decided, in view of your (Prentiss L. Coonley's) expressions in the matter that the Committee will devote its entire attention to preparing 'suggested policies and limitations for Code drafting'." (**) The minutes of the first meeting also quotes Prentiss L. Coonley as stating that the committee "having full knowledge of the problems in the various codes under their supervision had been selected for its insight and intelligence."

This committee in turn selected three sub-Committees, one of which was a labor (provisions) committee, consisting of three deputy administrators. In this regard the committee appears to have elected to proceed

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(*) Cf. Leon C. Marshall's "Walrus Memo" to the National Industrial Recovery Board, April 5, 1934.

(**) Cf. Memorandum from Code Planning Committee to Prentiss L. Coonley, NRA Code Administration Director, April 22, 1935.

without the advice of the labor advisory board which was presumably "composed of men who are thoroughly acquainted with labor problems throughout the country",(*) nor did the labor advisory board participate in any of the deliverations dealing with such an important part of the whole program. On the other hand, it would appear that the Committee considered that its collective perspective of labor issues would be better extended by the opinions of industrial specialists and accordingly invited the industrial advisory board, representing management, to participate in the discussions of labor problems. The committee also departed from General Johnson's "gold-fish bowl" method of conduct, inasmuch as it regarded its proceedings as "highly confidential".(**)

The committee and the several sub-committees held numerous meetings between April 17, 1935 and May 27, 1935. At its second meeting the committee decided that the way to proceed to suggest policy was by preparing another "model code". A perusal of the minutes of the various meetings would seem to indicate that there was a paucity of advanced industrial thought particularly as regards the problem of labor, and that the general direction of activity appeared to disregard the more fundamental issues of social-economic planning. Furthermore the committee appeared to oppose the incorporation of any mandatory provisions in codes dealing with "wages above the minimum". To some extent this trend of thought may have been inspired by the fact that Leon C. Marshall appears to have questioned the consideration of any pattern for "Wages Above the Minimum" in his "Walrus Memo" of April 5, 1935 to the National Industrial Recovery Board. This memorandum gave impetus to the creation of this committee.

The minutes of the meetings, nevertheless, do expose the individual and collective attitudes of those executives appointed for their knowledge of the problems and their insight and intelligence. The direction of industrial thought of this latest policy-making committee and some of its members on the issue of wages above the minimum and related subjects may be judged by the following quotations from the minutes of the various meetings:

> Meeting, April 19, 1935:
> The Committee:
> "It was felt that there should be no official ruling as to what constitutes an industry."
>
> ----------oOo----------
>
> Meeting, April 22, 1935:
> Query: "Does not the broad question of administration cover everything in a code except labor provisions?"

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(*) Cf. National Recovery Administration in the National Emergency Council "Manual of Emergency Recovery Agencies and Facilities".

(**) Cf. Minutes of Meetings on April 18, 1935, at the Willard Hotel, Washington, D. C., and April 19, 1935, at the Department of Commerce Building, Washington, D. C.

Walter Lanum, Chairman of the Committee:
Deputy Administrator:
"It is my idea that it does."

----------oOo----------

Meeting, May 7, 1935:
L. J. Martin, Acting Administrator
(Former Chief of Compliance Division):
"There is no way, from a compliance viewpoint, of writing 'an above the minimum scale provision' so it will be workable. But you can't leave it out."

"Put nothing in the code except that which is workable and reasonably sure of enforcement. Equitable adjustment should be taken out, but I don't know whether you could attempt to enforce it."

"The real problems in compliance are overlapping, interlocking definitions and too wide a coverage."

"I believe I would go on record as stating that I believe equitable adjustment should be left out of the code as a mandatory provision."

----------oOo----------

H. J. Ammerman, Deputy Administrator:
"Since you can't establish a mathematical yardstick by which you can measure equitable adjustment above the minimum that is a subject for collective bargaining."

----------oOo----------

Meeting, May 9, 1935:
R. E. Doherty, Deputy Administrator:
(Member of the Labor Sub-Committee):
"My argument against collective bargaining in setting up a wage scale is that it is economically unsound."

"I would not make it (referring to provisions for area-agreements--collective bargaining) mandatory."

----------oOo----------

George C. Stanley, Deputy Administrator:
Member of the Labor Sub-Committee:
"I don't think wages above the minimum provisions could be enforced. It is predicated upon there being no differential."

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Meeting, May 14, 1935:
Walter Mangum, Deputy Administrator:
Chairman of the Committee:
"The provision for no reduction in wages is also a debatable question. Mr. Marshall (Leon C. Marshall, Executive Secretary, National Industrial Recovery Board), feels that this Committee, aside from drafting the Model Code, has sufficient intelligence to work out some procedure to enable industry to handle wages in higher brackets outside the Code. Anyway, industry will handle it about as it pleases."

----------oOo----------

Meeting, May 16, 1935:
Walter Mangum, Deputy Administrator:
Chairman of the Committee:
"Referring to the equitable adjustment feature, the Committee feels it should be left out of the Code and Mr. Marshall (Leon C. Marshall, Executive Secretary, of the National Industrial Recovery Board, said we would have the unanimous vote of the Board (presumably the N.I.R.B.) backing us up on that."

----------oOo----------

Meeting, May 22, 1935:
Walter Mangum, Deputy Administrator:
Chairman of the Committee:
"I haven't had any discussions with the Labor Advisory Board, so my ideas are not tinted."

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Meeting, May 24, 1935:
M. M. Rose, Deputy Administrator:
Vice Chairman of the Committee
Chairman of the Labor Sub-Committee:
"On the other hand, the Labor Advisory Board

> has spent considerable time in getting up these things (presumably the Labor Advisory Board's recommendations) for inclusion in the code which upon mature judgment we believe are unenforceable, or not essentially to the advantage of labor."

Ultimately the committee drew up a set of proposals. The labor advisory board criticized the committee's proposals dealing with labor issues and called attention to the incompleteness of the committee's recommendations and specifically called attention to the omission of any reference to the problem of "wages above the minimum."(*)

The committee, however, finally decided that no provision for "wages above the minimum" should be made mandatory by public law and the "model" code, suggesting the policy proposed by this committee, did not include any such provision. Furthermore, collective bargaining provisions for so-termed "wage-area-agreements"were included with the group of permissive provisions subject to election by the particular industry.

## I. COMMUNICATIONS BETWEEN THE NRA ADMINISTRATIVE OFFICE AND THE CHAIRMAN OF THE NRA LABOR ADVISORY BOARD

Before concluding this Chapter on NRA policy, it would appear relevant to quote a letter, dated March 8, 1935, from Gustav Peck, Assistant to the Administrative Officer, to William Green, Chairman of the labor advisory board, which sets forth the intricacies of the problem and this assistant administrative officer's endorsement of the employment of so-termed "basing points" as a support for the wage structure:

> "There is a problem which has come up repeatedly in the NRA and because it affects so intimately the position of trade unions in our scheme, I am submitting it to you for consideration with A.F. of L. officials and possibly also with the Labor Advisory Board.
>
> "Nearly all the codes have a provision for 'an equitable adjustment of rates above the minimum'. No one knows clearly what that means, and there is some evidence that the wage rates of the better paid workers have not gone up in proportion to those of the unskilled.
>
> "Generally there is no information throughout the administrative offices regarding the adjustment of wages above the minimum which have been made by industries. It would be well nigh impossible to consider this provi-

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(*) Cf. Memorandum from the Labor Advisory Board to the Code Planning Committee, May 22, 1935.

sion an enforceable wage provision. The compliance offices have very little to guide them; but their records show that they handled very few cases of wages above the minimum.

"Occasionally however, an industry will take this provision with the degree of seriousness that ought to hearten those whose interest it is to protect the position of labor. They go through some computations of the wage structure by plants and for the whole industry, before and after the establishment of the code, and work up an elaborate wage scale for all the different occupations in the industry. I am attaching an illustration of one of these efforts in an industry that is not well organized. Having done this, they ask NRA's approval for these minimum rates for the different occupations. My own position is that, while the effort on the part of the industry is to be applauded and that perhaps these proposed rates would have a lifting effect upon wages in the industry, we can not approve the procedure. I base this judgment, first - upon the very great difficulty of estimating proper wage rates where conditions vary so much over the industry, and second - upon the fact that such rates are established by employers without the necessary consultation with representatives of the workers in the industry. You must understand that if we approve these provisions, and make them part of the code, they would quite certainly become the actual rates paid, and not merely the minimum rates. I am afraid that this would tend to freeze rates and would give Government sanction to a rigid wage structure.

"As you perhaps know, I personally approve of the establishment of several minimum rates sufficiently far apart between the least skilled and the most skilled to bolster up the wage structure. The provision of one of two additional minima above the lowest minimum seems to me a necessary provision to maintain fair competition, to give the unorganized workers some protection under the codes, and to give both organized labor and employers who deal with organized labor some protection.

"It remains true however the only comparatively few codes provide for more than one minimum. Nearly all of them have the provision for 'equitable adjustment'. The dilemma is this: The great bulk of the industries are doing nothing about it; the Compliance Division is happy because there can practically be no evasions of such a provision; the workers have no protection if they receive more than $15 or $16 a week. On the contrary, when an industry makes an honest effort to handle

this problem on an industry-wide bases as they are really ordered to in the code, we can not afford, for reasons I have already outlined, either to approve these provisions or to permit them to be broadcasted over the industry. Of course, the only final answer to this whole problem is collective bargaining; but what shall we do in the interval, and what is the proper policy from the long range point of view?"

Mr. Green replied to the Assistant Administrative Officer under date of March 8, 1935, as follows:

"I appreciate fully the importance of the point which you raise in your letter dated March 5th. Labor, however, has been reluctant to approve a plan which would provide for the fixing of several additional minimum rates above the lowest minimum set in industrial codes of fair practice. Such a procedure involves a wage fixing policy on the part of the government which of course has always been objectionable to labor.

"We have always felt that the real solution of this problem to which you have called my attention is the practice and application of collective bargaining. I realize that in the well organized industries the interests of the workers can be protected through collective bargaining. In the unorganized industries, however, collective bargaining is not practiced and as a result the minimum rates of pay fixed in the code become applicable to an increasingly larger number of workers.

"I realize that you have raised a very serious problem. It is a problem which should be given intense consideration by the National Recovery Administration and by the representatives of labor.

" I thank you sincerely for writing me about this matter."

III. AN APPRAISAL

The foregoing, tracing the substantial details in the development and formulation of NRA policy dealing with the subject of "wages above the minimum", disclosed the inconstancy of the Administration with the ultimate result that no complete plan was formulated for administrative guidance.

At the outset, it is found that the first code, the Code for Cotton Textile Industry, submitted without any provision for the control of wages of that large group of workers receiving more than the pre-code-minimum, was modified by the Presidential Order of approval on July 9, 1933 to provide for the maintenance of the existing differentials in the wages of these workers. Of itself, such a provision did not necessarily provide for an increase in the money earnings of the worker or even the maintenance of his former earnings. Such situations were conditioned by other circumstances. Nevertheless, it is evident that the President concluded that it was essential that some consideration should be given to the regulation of the wages of these workers beyond that contained in minimum wage provisions. Accordingly, it may be inferred that a precedent for a policy was created but the Administration failed to make any announcement.

Again, it is found that the President re-affirmed his conclusions on July 15, 1933 in the issuance of the President's reemployment agreement, although the provisions in this "blanket Code" dealing with this subject were vague and certainly not in the positive terms expressed in the Order approving the first code. Once more the Administration appears to have failed to announce whether or not such provisions were to be considered mandatory and if so to offer a clear-cut pattern.

Such indications of a trend toward regulation of the entire wage structure as the two just mentioned were followed by the provisions suggested for the guidance of industry and trade in the several "model codes". It would appear that some provision was desirable but the patterns offered were indefinite and conflicting. Furthermore, the provisions were not mandatory. Management was permitted to state its terms or no terms.

In the meantime negotiations regarding the code for the Construction Industry centered attention on the incorporation of some provisions for the control of the wages of so-termed "skilled" and "semi-skilled" workers. Organized labor, backed by the NRA labor advisory board, were demanding protection for these workers. Both appeared to be seeking protection for the wages of the workers in the higher-wage-scale brackets through the processes of collective bargaining and the employment of the instrument of sub-section 7(b) of the Act. Apparently, a decision could not be avoided and the Administration through the original Policy Board announced on October 25, 1933, its one formal although negative, incomplete and indefinite policy, dealing with "Wages Above the Minimum", to the effect that neither union agreements nor wage schedules were to be incorporated in codes. This declaration was qualified to permit the inclusion of one or two "basing points". The terms "wage schedules" or "basing points", however, were not defined. Nor did the Administration announce what sort of a provision, if any, was acceptable or required.

Regardless of the Administration's failure to make any other formal announcement concerning the requirements in codes on this sub-

ject, a great number of the executives charged with the responsibility of developing codes appear to have considered that the inclusion of some provision, inoperative though it might be, was necessary to conform to the unwritten policy. Provisions, frequently patterned after the clauses in the Presidential Order for the code for the Cotton Textile Industry, in the President's Reemployment Agreement and in the "model codes" and modifications of these as they appeared in other codes, continued to be included. In a number of instances "wage schedules" although contrary to expressed formal policy were permitted. Twenty-nine codes contained provisions with one or more "basing-points". However, ninety-two codes were approved without any positive provision for "wages above the minimum" of which thirteen contained no provision.

The failure of the Administration to develop a definite policy in the early days of codification may be accounted for by the lack of an organized administrative "machine". This excuse, however, can hardly be offered for its indecision subsequent to the reorganizations whereby distinct agencies were set-up to consider the formulation of policy.

OFFICE OF THE NATIONAL RECOVERY ADMINISTRATION

THE DIVISION OF REVIEW

THE WORK OF THE DIVISION OF REVIEW

Executive Order No. 7075, dated June 15, 1935, established the Division of Review of the National Recovery Administration. The pertinent part of the Executive Order reads thus:

> The Division of Review shall assemble, analyze, and report upon the statistical information and records of experience of the operations of the various trades and industries heretofore subject to codes of fair competition, shall study the effects of such codes upon trade, industrial and labor conditions in general, and other related matters, shall make available for the protection and promotion of the public interest an adequate review of the effects of the Administration of Title I of the National Industrial Recovery Act, and the principles and policies put into effect thereunder, and shall otherwise aid the President in carrying out his functions under the said Title. I hereby appoint Leon C. Marshall, Director of the Division of Review.

The study sections set up in the Division of Review covered these areas: industry studies, foreign trade studies, labor studies, trade practice studies, statistical studies, legal studies, administration studies, miscellaneous studies, and the writing of code histories. The materials which were produced by these sections are indicated below.

Except for the Code Histories, all items mentioned below are scheduled to be in mimeographed form by April 1, 1936.

THE CODE HISTORIES

The Code Histories are documented accounts of the formation and administration of the codes. They contain the definition of the industry and the principal products thereof; the classes of members in the industry; the history of code formation including an account of the sponsoring organizations, the conferences, negotiations and hearings which were held, and the activities in connection with obtaining approval of the code; the history of the administration of the code, covering the organization and operation of the code authority, the difficulties encountered in administration, the extent of compliance or non-compliance, and the general success or lack of success of the code; and an analysis of the operation of code provisions dealing with wages, hours, trade practices, and other provisions. These and other matters are canvassed not only in terms of the materials to be found in the files, but also in terms of the experiences of the deputies and others concerned with code formation and administration.

The Code Histories, (including histories of certain NRA units or agencies) are not mimeographed. They are to be turned over to the Department of Commerce in typewritten form. All told, approximately eight hundred and fifty (850) histories will be completed. This number includes all of the approved codes and some of the unapproved codes. (In Work Materials No. 18, Contents of Code Histories, will be found the outline which governed the preparation of Code Histories.)

(In the case of all approved codes and also in the case of some codes not carried to final approval, there are in NRA files further materials on industries. Particularly worthy of mention are the Volumes I, II and III which constitute the material officially submitted to the President in support of the recommendation for approval of each code. These volumes

set forth the origination of the codes, the sponsoring group, the evidence advanced to support the proposal, the report of the Division of Research and Planning on the industry, the recommendations of the various Advisory Boards, certain types of official correspondence, the transcript of the formal hearing, and other pertinent matter. There is also much official information relating to amendments, interpretations, exemptions, and other rulings. The materials mentioned in this paragraph were of course not a part of the work of the Division of Review.)

## THE WORK MATERIALS SERIES

In the work of the Division of Review a considerable number of studies and compilations of data (other than those noted below in the Evidence Studies Series and the Statistical Material Series) have been made. These are listed below, grouped according to the character of the material. (In Work Materials No. 17, Tentative Outlines and Summaries of Studies in Process, the materials are fully described).

### Industry Studies

Automobile Industry, An Economic Survey of
Bituminous Coal Industry under Free Competition and Code Regulation, Ecnomic Survey of
Electrical Manufacturing Industry, The
Fertilizer Industry, The
Fishery Industry and the Fishery Codes
Fishermen and Fishing Craft, Earnings of
Foreign Trade under the National Industrial Recovery Act
  Part A - Competitive Position of the United States in International Trade 1927-29 through 1934.
  Part B - Section 3 (e) of NIRA and its administration.
  Part C - Imports and Importing under NRA Codes.
  Part D - Exports and Exporting under NRA Codes.
Forest Products Industries, Foreign Trade Study of the
Iron and Steel Industry, The
Knitting Industries, The
Leather and Shoe Industries, The
Lumber and Timber Products Industry, Economic Problems of the
Men's Clothing Industry, The
Millinery Industry, The
Motion Picture Industry, The
Migration of Industry, The: The Shift of Twenty-Five Needle Trades From New York State, 1926 to 1934
National Labor Income by Months, 1929-35
Paper Industry, The
Production, Prices, Employment and Payrolls in Industry, Agriculture and Railway Transportation, January 1923, to date
Retail Trades Study, The
Rubber Industry Study, The
Textile Industry in the United Kingdom, France, Germany, Italy, and Japan
Textile Yarns and Fabrics
Tobacco Industry, The
Wholesale Trades Study, The
Women's Neckwear and Scarf Industry, Financial and Labor Data on

Women's Apparel Industry, Some Aspects of the

## Trade Practice Studies

Commodities, Information Concerning: A Study of NRA and Related Experiences in Control
Distribution, Manufacturers' Control of: Trade Practice Provisions in Selected NRA Codes
Distributive Relations in the Asbestos Industry
Design Piracy: The Problem and Its Treatment Under NRA Codes
Electrical Mfg. Industry: Price Filing Study
Fertilizer Industry: Price Filing Study
Geographical Price Relations Under Codes of Fair Competition, Control of
Minimum Price Regulation Under Codes of Fair Competition
Multiple Basing Point System in the Lime Industry: Operation of the
Price Control in the Coffee Industry
Price Filing Under NRA Codes
Production Control in the Ice Industry
Production Control, Case Studies in
Resale Price Maintenance Legislation in the United States
Retail Price Cutting, Restriction of, with special Emphasis on The Drug Industry.
Trade Practice Rules of The Federal Trade Commission (1914-1936): A classification for comparision with Trade Practice Provisions of NRA Codes.

## Labor Studies

Cap and Cloth Hat Industry, Commission Report on Wage Differentials in
Earnings in Selected Manufacturing Industries, by States, 1933-35
Employment, Payrolls, Hours, and Wages in 115 Selected Code Industries 1933-35
Fur Manufacturing, Commission Report on Wages and Hours in
Hours and Wages in American Industry
Labor Program Under the National Industrial Recovery Act, The
  Part A. Introduction
  Part B. Control of Hours and Reemployment
  Part C. Control of Wages
  Part D. Control of Other Conditions of Employment
  Part E. Section 7(a) of the Recovery Act
Materials in the Field of Industrial Relations
PRA Census of Employment, June, October, 1933
Puerto Rico Needlework, Homeworkers Survey

## Administrative Studies

Administrative and Legal Aspects of Stays, Exemptions and Exceptions, Code Amendments, Conditional Orders of Approval
Administrative Interpretations of NRA Codes
Administrative Law and Procedure under the NIRA
Agreements Under Sections 4(a) and 7(b) of the NIRA
Approved Codes in Industry Groups, Classification of
Basic Code, the -- (Administrative Order X-61)
Code Authorities and Their part in the Administration of the NIRA
  Part A. Introduction
  Part B. Nature, Composition and Organization of Code Authorities

Part C. Activities of the Code Authorities
Part D. Code Authority Finances
Part E. Summary and Evaluation
Code Compliance Activities of the NRA
Code Making Program of the NRA in the Territories, The
Code Provisions and Related Subjects, Policy Statements Concerning
Content of NIRA Administrative Legislation
Part A. Executive and Administrative Orders
Part B. Labor Provisions in the Codes
Part C. Trade Practice Provisions in the Codes
Part D. Administrative Provisions in the Codes
Part E. Agreements under Sections 4(a) and 7(b)
Part F. A Type Case: The Cotton Textile Code
Labels Under NRA, A Study of
Model Code and Model Provisions for Codes, Development of
National Recovery Administration, The: A Review of its Organization and Activities
NRA Insignia
President's Reemployment Agreement, The
President's Reemployment Agreement, Substitutions in Connection with the
Prison Labor Problem under NRA and the Prison Compact, The
Problems of Administration in the Overlapping of Code Definitions of Industries and Trades, Multiple Code Coverage, Classifying Individual Members of Industries and Trades
Relationship of NRA to Government Contracts and Contracts Involving the Use of Government Funds
Relationship of NRA with States and Municipalities
Sheltered Workshops Under NRA
Uncodified Industries: A Study of Factors Limiting the Code Making Program

## Legal Studies

Anti-Trust Laws and Unfair Competition
Collective Bargaining Agreements, the Right of Individual Employees to Enforce
Commerce Clause, Federal Regulation of the Employer-Employee Relationship Under the
Delegation of Power, Certain Phases of the Principle of, with Reference to Federal Industrial Regulatory Legislation
Enforcement, Extra-Judicial Methods of
Federal Regulation through the Joint Employment of the Power of Taxation and the Spending Power
Government Contract Provisions as a Means of Establishing Proper Economic Standards, Legal Memorandum on Possibility of
Industrial Relations in Australia, Regulation of
Intrastate Activities Which so Affect Interstate Commerce as to Bring them Under the Commerce Clause, Cases on
Legislative Possibilities of the State Constitutions
Post Office and Post Road Power -- Can it be Used as a Means of Federal Industrial Regulation?
State Recovery Legislation in Aid of Federal Recovery Legislation History and Analysis
Tariff Rates to Secure Proper Standards of Wages and Hours, the Possibility of Variation in
Trade Practices and the Anti-Trust Laws
Treaty Making Power of the United States
War Power, Can it be Used as a Means of Federal Regulation of Child Labor?

9768—4.

## THE EVIDENCE STUDIES SERIES

The Evidence Studies were originally undertaken to gather material for pending court cases. After the Schechter decision the project was continued in order to assemble data for use in connection with the studies of the Division of Review. The data are particularly concerned with the nature, size and operations of the industry; and with the relation of the industry to interstate commerce. The industries covered by the Evidence Studies account for more than one-half of the total number of workers under codes. The list of these studies follows:

Automobile Manufacturing Industry
Automotive Parts and Equipment Industry
Baking Industry
Boot and Shoe Manufacturing Industry
Bottled Soft Drink Industry
Builders' Supplies Industry
Canning Industry
Chemical Manufacturing Industry
Cigar Manufacturing Industry
Coat and Suit Industry
Construction Industry
Cotton Garment Industry
Dress Manufacturing Industry
Electrical Contracting Industry
Electrical Manufacturing Industry
Fabricated Metal Products Mfg. and Metal Finishing and Metal Coating Industry
Fishery Industry
Furniture Manufacturing Industry
General Contractors Industry
Graphic Arts Industry
Gray Iron Foundry Industry
Hosiery Industry
Infant's and Children's Wear Industry
Iron and Steel Industry
Leather Industry
Lumber and Timber Products Industry
Mason Contractors Industry
Men's Clothing Industry
Motion Picture Industry
Motor Vehicle Retailing Trade
Needlework Industry of Puerto Rico
Painting and Paperhanging Industry
Photo Engraving Industry
Plumbing Contracting Industry
Retail Lumber Industry
Retail Trade Industry
Retail Tire and Battery Trade Industry
Rubber Manufacturing Industry
Rubber Tire Manufacturing Industry
Shipbuilding Industry
Silk Textile Industry
Structural Clay Products Industry
Throwing Industry
Trucking Industry
Waste Materials Industry
Wholesale and Retail Food Industry
Wholesale Fresh Fruit and Vegetable Industry
Wool Textile Industry

## THE STATISTICAL MATERIALS SERIES

This series is supplementary to the Evidence Studies Series. The reports include data on establishments, firms, employment, payrolls, wages, hours, production capacities, shipments, sales, consumption, stocks, prices, material costs, failures, exports and imports. They also include notes on the principal qualifications that should be observed in using the data, the technical methods employed, and the applicability of the material to the study of the industries concerned. The following numbers appear in the series:
9768--5.

Asphalt Shingle and Roofing Industry
Business Furniture
Candy Manufacturing Industry
Carpet and Rug Industry
Cement Industry
Cleaning and Dyeing Trade
Coffee Industry
Copper and Brass Mill Products Industry
Cotton Textile Industry
Electrical Manufacturing Industry
Fertilizer Industry
Funeral Supply Industry
Glass Container Industry
Ice Manufacturing Industry
Knitted Outerwear Industry
Paint, Varnish, and Lacquer, Mfg. Industry
Plumbing Fixtures Industry
Rayon and Synthetic Yarn Producing Industry
Salt Producing Industry

## THE COVERAGE

The original, and approved, plan of the Division of Review contemplated resources sufficient (a) to prepare some 1200 histories of codes and NRA units or agencies, (b) to consolidate and index the NRA files containing some 40,000,000 pieces, (c) to engage in extensive field work, (d) to secure much aid from established statistical agencies of government, (e) to assemble a considerable number of experts in various fields, (f) to conduct approximately 25% more studies than are listed above, and (g) to prepare a comprehensive summary report.

Because of reductions made in personnel and in use of outside experts, limitation of access to field work and research agencies, and lack of jurisdiction over files, the projected plan was necessarily curtailed. The most serious curtailments were the omission of the comprehensive summary report; the dropping of certain studies and the reduction in the coverage of other studies; and the abandonment of the consolidation and indexing of the files. Fortunately, there is reason to hope that the files may yet be cared for under other auspices.

Notwithstanding these limitations, if the files are ultimately consolidated and indexed the exploration of the NRA materials will have been sufficient to make them accessible and highly useful. They constitute the largest and richest single body of information concerning the problems and operations of industry ever assembled in any nation.

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